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ABSTRACT

The impact of sunshine laws on college governance is discussed based on field and legal research, a Wingspread symposium (Racine, Wisconsin, September 4-5, 1984), and a follow-up meeting (Washington, D.C., October 1, 1984). In addition to open meeting laws, the way that the democratic process currently operates, and should work, is examined. A review is provided of: the sunshine laws of all 50 states and their relative degrees of openness, relevant case laws and the opinions of state attorneys general; and the findings of in-depth interviews with a cross section of individuals from six states. The states were selected from among the array of statutes currently laws in effect. From "most open" to "least open," those states are Florida, Montana, Minnesota, Iowa, Texas, and Pennsylvania. The debate about openness is based on issues such as the relative costs and benefits derived by particular colleges, questions of effectiveness in getting things done, and conflicting aims of individuals who seek both participation and privacy. The importance of information as a resource is also addressed. Included are recommendations for reform that take into account the public's right to know and also what each of the various publics has a right to know. Appendices include: definitions of 25 characteristics of openness and a matrix matching states and the characteristics; information on court cases for each state; a list of citations to state sunshine laws; a list of the Wingspread and follow-up meeting participants; and a selected bibliography. (SW)

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The Costs and Benefits of Openness

Marian Chevland

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Foreword

Openness in government has always been an American essential, although many contemporary factors have prompted its expansion in recent years. All 50 states have adopted what are generally called "open meeting" or "sunshine" laws. And while the various laws differ in what they command and proscribe, they are uniform to the extent that all public colleges and universities fall under their purview. What is occurring, in essence, is a convergence of two powerful impulses: a call for more openness, and a communications revolution that makes greater openness technologically feasible.

This study of the impact of sunshine laws on college and university governance examines the costs and the benefits of openness in various settings and from various perspectives. The issues covered by this study go beyond open meeting laws, however, and include an analysis of how the democratic process does, could, and should operate. In this report Harlan Cleveland helps to illuminate the way interests must be balanced in a participatory society.

In addition to conducting a comprehensive examination of the costs and the benefits of open meeting laws, this report assesses the expanding importance of information as a resource and provides a detailed examination of those governance issues that are most directly affected by sunshine laws. It also offers specific recommendations for reform that not only take into account the public's right to know, but also what each of the various publics has a right to know.

This report reviews the sunshine laws of all 50 states and their relative degrees of openness, surveys relevant case laws and the opinions of state attorneys general, and summarizes in-depth interviews with a cross section of individuals from six states. The states were selected on the basis of their representing the array of statutes currently in effect. From "most open" to "least open," those states are Florida, Montana, Minnesota, Iowa, Texas, and Pennsylvania.

It is our objective to spark a national debate that, among other things, should help clarify and further define the so-called "trilemma" associated with the mandate to serve the public interest. As Mr. Cleveland points out, this trilemma encompasses the public's right to know, the individual's right to privacy, and the public institution's mandate to serve "the public interest." Equally as important, we hope the study will generate interest on the part of the press to reflect on the experience we have had with open meeting laws generally—including the laws' impact on the search process for college and university presidents.

The debate about openness is structured by considerations such as the relative costs and benefits derived by particular institutions, questions of

effectiveness in getting things done, and the natural yet conflicting aims of individuals who seek both participation and privacy. Ultimately, calculating the costs and the benefits of openness, at least in the case of higher education, is an exercise in reconciling the academy's need to accomplish its mission and the fundamentally American requirement of toleration for many different points of view.

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The Association of Governing Boards is grateful to Dean Harlan Cleveland and his associates at the Hubert H. Humphrey Institute of Public Affairs at the University of Minnesota who were commissioned to conduct this independent study. They are solely responsible for collecting and analyzing the data and making the report's recommendations and conclusions. I also wish to acknowledge the participation and many contributions of the people who attended a symposium at Wingspread in September 1984 and a subsequent meeting in Washington, D.C., in October 1984. These individuals were the source of many helpful suggestions and recommendations. Their names and addresses are listed in Appendix D.

And finally I would like to give special thanks to the Exxon Education Foundation for its generous support in making this study possible; to the Johnson Foundation for sponsoring the symposium at Wingspread; and to the Gulf + Western Foundation for providing the funds to print this publication.

Robert L. Gale
President
Association of Governing Boards

Preface

This report to the Association of Governing Boards (AGB) on how "open meeting laws" are working out in the governance of higher education in the United States is the culmination of field research, legal research, and a workshop convened by AGB in September 1984 at Wingspread, the Johnson Foundation's conference center in Racine, Wisconsin. (Participants in the Wingspread workshop are listed in Appendix D.)

The field research was done by Sandra Braman, administrative fellow at the University of Minnesota's Hubert H. Humphrey Institute of Public Affairs; she also provided valuable additional assistance. An early conceptual contribution to the project was offered by Mitch Pearlstein, former assistant to the president of the University of Minnnesota, and now on the editorial staff of the *St. Paul Pioneer Press & Dispatch*. Mary Shallman, my graduate assistant during 1983-84 and now a graduate of both the Humphrey Institute and the University of Minnesota Law School, first collected and analyzed the sunshine laws of the 50 states. Judith Block McLaughlin of Harvard University contributed to the field research, particularly that conducted in Florida, Texas, and Iowa; her work with David Riesman on presidential searches has been enlightening. Clark Kerr's research with Marian Gade on the problems of leadership in higher education helped provide a context for the specific problems of openness we explored here. A preliminary report called "Sunshine Laws From the 50 States: A Spectrum" was sent to the 50 state attorneys general for their comment. Their welcomed reactions, showing a lively interest in this research, have been incorporated into this paper.

We are grateful to the initiative and continuing interest of Tom Ingram, executive vice president of the Association of Governing Boards, the financial help provided to AGB for this purpose by the Exxon Education Foundation, and the Johnson Foundation's cooperation in hosting the September workshop.

Most of all, we are indebted to the many other persons (who must, in the nature of things, remain anonymous) who helped us through candid interviews and correspondence. We are not aware of any person asked to assist in this research who was unwilling to do so. The subject evidently is current and choice, and everybody is looking for answers. The intent of this paper, as part of the search for practical answers to practical puzzles, is to clarify the benefits and costs of openness, to suggest a balanced way of approaching the problems, and to discuss the opportunities it presents to our participatory democracy.

Minneapolis, Minnesota
April 1985

Harlan Cleveland

Introduction

This study has investigated the costs and benefits of openness for governing higher education in the United States.

The procedure was first to examine the sunshine laws of all 50 states and construct a spectrum of comparative openness (Appendix A), to survey relevant case law and the opinions of state attorneys general (Appendix B), and to conduct in-depth interviews with a cross section of individuals from six states selected as representing the range of the spectrum of openness. From "most open" to "least open" those states are Florida, Montana, Minnesota, Iowa, Texas, and Pennsylvania.

The resulting analysis might be of interest beyond the realm of higher education, for it is intended to refine our understanding of how the democratic process does, could, and should operate, and to illuminate the way interests must be balanced in a participatory society. The First Amendment is clear that free speech should not be burdened by public policy. But in protecting speech of one kind, other kinds might be restricted. And there's the rub.

CHAPTER ONE

The Public Interest: A Trilemma

The mandate to serve the public interest is the basis, implicitly or explicitly, for most state open meeting laws. In Tennessee, for example—a state in which closed meetings are not allowed under any circumstances—the strictness of the law is defended as just "in the absence of proof that opening all meetings was detrimental to the public interest." In other states, a determination of the public interest is the final criterion to be used in deciding whether or not it is appropriate to close a meeting in accordance with a specified exemption.

But what *is* "the public interest"? To the mass media, it lies in the public's right to know—to receive information (through the communications media) about all the steps in public decision making. To people who think their privacy is (or might be) invaded, it is the barrier against such invasions. To education administrators, the public interest lies in allowing public officials, chosen by some democratic process, freedom to make decisions according to procedures they determine best meet the operating needs of their institutions. Discussion aimed at resolving the conflict among these viewpoints is often muddy; repeated assertions of a clash among absolute rights obscure the complementary elements of the public interest all say they wish to serve.

In applying sunshine laws, those complementary elements are three:

1. *The public's right to know* derives from the same values of open and robust exposure of ideas that underpin the First Amendment and is therefore fundamental to the operations of the democratic process. Free speech is meaningless unless the public is free to gather information about which to speak. And informed decision making in electing public officials is impossible unless the public is knowledgeable about the actions of those officials and about the institutions they are to govern. The communications media, print and electronic, most often appear as surrogates for the public in defending its right to know. But are the media's interests the same as the public interest?

2. *The individual's right of privacy* is protected by laws that vary widely from state to state. With the encroachments of modern communications technology on the private domain, however, awareness of the importance of the right to privacy is growing everywhere; the trend is toward strengthening existing laws and establishing privacy laws where before there had been none. The right to individual privacy is acknowledged almost universally by sunshine laws—the most common exception for closed meetings is precisely to protect that right. But is the individual's perceived need for privacy the same as the public interest?

3. *The public institution's mandate to serve the public interest* requires freedom to operate effectively and efficiently. It is not in the public interest when institutions designed to serve the public fail to accomplish their goals, such as providing top quality higher education to the community, through an excess of openness. The mandate to fulfill institutional functions implies a need for protecting the operating procedures—ways of making decisions, freedom and candor of internal communication, and dealing with the public—that are deemed necessary to serve the public interest. But are members of governing boards and the academic administrators they appoint the definitive interpreters of the public interest?

In the following discussion of how open meeting laws are formulated and interpreted in particular situations, and of the problems those involved encounter in applying them, we can watch the focus moving from one of these elements of the public interest to another.

We have here not a dilemma but a *tri*lemma. No one, or even two, of these three elements of the public interest can or should be regarded as an overriding principle. As with other good principles the only general answer is "it all depends"; ethics is the art of combining them, case by case, in common sense outcomes.

Executives and governing board members in higher education should not regard themselves as—*above all other considerations* — responsible for defending the public institution's right to discharge its mandate. Individuals cannot claim an absolute right of privacy. The media, self-appointed defenders of the public's right to know, don't have an overriding privilege, either. All three participants in this complex choreography—and others who are brought in to consult and to adjudicate—should regard themselves as responsible for seeking outcomes that seriously take into account all three aspects of the public interest, avoiding the easier path of deciding one outcome is "right."

This account of the costs and benefits of openness concludes with suggestions of some guidelines for balancing these three elements when operating higher education institutions in the sunshine.

CHAPTER TWO

Sunshine Laws

In the United States openness is not a concept inherited from the common law tradition. It appeared around the turn of this century, first in an 1898 Utah statute and soon thereafter in 1905 in Florida. A remake of the latter in 1954 set off a wave of legislation around the country: By 1959, 20 states had sunshine laws as part of the general attempt to eliminate the effects of secret actions upon public decision making.

Most state sunshine laws, however, developed during a second burst of law making during the post-Watergate 1970s out of revulsion (their purpose clauses are full of resentment and fury) for deception, corruption, and cover-up in high places. By 1974, 46 states had sunshine laws, and by 1977 all 50 states had them.

The comparable federal statute followed those of the states, and the United Kingdom itself finally passed one as well. As they have done before in two centuries of history, the American people through their elected representatives reasserted their right to hold the reins of government in their own democratic hands.

Sunshine laws were originally derived from the philosophy of the First Amendment to the U. S. Constitution, as is clear in the purpose clause cast by California and borrowed by many other states:

> The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so they may retain control over the instruments they have created.

This emphasis on a right to information comes from an interpretation of how the democratic process works:

> [P]ublic agencies exist to aid in the conduct of the people's business and the proceedings of public agencies [should] be conducted openly so that the public may remain informed. . . . It is the intent of the law that actions of state agencies be taken openly and that their deliberations be conducted openly.

The Kansas statute, closely following Thomas Jefferson, says "A representative government is dependent upon an informed electorate."

The laws themselves vary in detail from state to state. (A detailed breakdown can be found in Appendix A. Appendix C provides citations for state open meeting laws.) But all address the following points.

Purpose

Many states, particularly those whose laws were shaped during the 1970s, include provisions outlining their intent. In others, it has taken judicial or attorney general interpretation to make their purpose explicit. Everywhere the thrust is toward liberal interpretation in general and narrow construction of any particular exceptions or exemptions that may be carved out of the law.

The right of the public to attend meetings is distinguished from the right to participate in meetings. In many states, such as Arizona, it is understood that the public has a right to voice its opinion when decisions are being made on its behalf. The public also seems to differentiate between these two rights: In Hawaii, for example, when every kind of meeting was opened up almost no one came, leading one administrator at the University of Hawaii to comment that "Students don't want so much to participate in the managing of the university, as to watch it being managed through an open door."

Coverage

The different methods used to determine which state agencies and bodies are subject to the law include:

a. those receiving or spending public money
b. those brought into being by law
c. those carrying out a general public function
d. those carrying out public functions or rule-making functions for the public
e. enumeration

Almost every public university and college is accountable to sunshine procedures by these criteria—50 percent of the campuses and 80 percent of the students in the country, as Clark Kerr points out in *Presidents Make a Difference*.

Higher education institutions relate to the state in four different ways:

- Autonomous institutions mandated by a state constitution are not necessarily subject to other laws of the state. Only in Colorado and California, however, have regents of such state institutions been adjudged to be beyond the scope of the sunshine laws. The University of Virginia in the past was excluded from coverage, but is no longer. In Massachusetts, regents are subject to the law but are allowed additional subject areas for which meetings may be closed, and in Wisconsin notice requirements are not applied as strictly to universities and colleges as they are to other institutions. Other autonomous state schools have chosen to develop their own open meeting laws in alignment with state laws, even though they need not.
- State college and university systems that are agencies of the state are clearly subject to state sunshine laws.
- Private institutions that receive some public funds, such as Cornell University (which has four statutory colleges on its campus) and Syracuse (which, though private, runs a public school of forestry), have been deemed to be covered by state sunshine laws by virtue of the fact that they receive and expend public money.
- Private institutions that receive no public funds are not by law subject to sunshine restrictions. However, it seems increasingly likely that in our par-

ticipatory society what affects the public sector today will affect the private sector tomorrow.

Depth of coverage—how deeply within the hierarchy of an organization sunshine laws apply—is rarely covered adequately within the law itself; more often, courts and attorneys general determine application case by case. At one extreme, such as in the relatively closed state of Pennsylvania, only meetings of the Board of Regents must be open; at the other extreme, as in Florida, any or all committee, subcommittee, and advisory board meetings must be open as well. Nevada goes so far as to require the Board of Regents to establish and monitor open meeting laws for university and college student groups. The increasing decentralization of university and college administrations since the 1960s increases both the importance and the difficulty of such responsibilities in governing higher education.

Definition of Meeting

In many states the exact definition of a meeting covered by the law is also left vague, leading to six areas of contention:

1. How many people constitute a meeting? Ten states offer no numerical definition at all; in others the answers range from two or more people to a quorum or majority. The lower figures indicate an intent to chill all communication among those in power without public visibility. Where the higher figure is applied, the assumption is the public is in no danger unless the group assembled is capable of taking action.

2. What kind of discourse comprises the content of a public meeting? In a few states—such as Pennsylvania, where only a $10 fine is levied for violation of its sunshine law—only voting must occur in the open. Most others also include the discussion leading to action. But there are many kinds of discussion, including that upon specific proposals before the decision-making body, on general topics for which that body has responsibility, about things in general, for the purposes of self-education, for self-evaluation, for brainstorming, and for fact-finding.

Many states are afraid of establishing a situation in which decisions are only rubber-stamped in public. A Louisiana attorney general's opinion noted, for example, the "purpose of the Open Meeting Law is to prevent private meetings of public bodies in which only the 'end result' is observed by public in open meetings, with all important discussion and arguments having taken place behind closed doors." A Wisconsin attorney general's opinion comes at the issue from the opposite direction: "Discussions or brainstorming of a tentative nature preliminary to focusing on a specific outcome and which are not intended to evade the law are not covered by the law." The Texas statute offers statutory language addressing this point when it defines what is covered as "a verbal exchange . . . attempting to arrive at a decision on any public business."

Other states define covered discussion still more broadly. Oklahoma points out that the purpose of the law is to "encourage and facilitate an informed citizenry's *understanding* of the governmental process and governmental problems" (emphasis added). Iowa declares its purpose is to let citizens understand the rationale behind public policy. Virginia seeks an "increased awareness" on the part of its citizens. Washington specifies the intent is to allow the public "to observe all steps in the making of governmental decisions." In

Maryland, coverage of advisory boards specifically means that study, evaluation, and making recommendations are included. A number of states rely on the interpretation offered by *American Law Reports*, third edition: "Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, could an open meeting regulation frustrate . . . evasive devices." Once the kinds of discourse to be covered by a sunshine law have been defined, there is the additional problem of distinguishing what discourse is covered from what is not—and the two often are mixed.

3. Are chance, informal, or social gatherings covered? Many states take a pragmatic approach and specifically exclude those kinds of meetings not convened for the purpose of undertaking public action, as in Mississippi where the open meeting law "shall not apply to chance meetings or social gatherings of members of a public body." In other states, however, the fear of abuse by those in power is so great that even social and informal meetings "held in anticipation of or in conjunction with a regular or special meeting," such as a pre-meeting dinner party, are forbidden. The dangers of such abuse were commented on by the attorney general's office in Wyoming, which noted that "private pre-meetings at which no vote is taken but the intent of the decision-makers becomes apparent" was that state's biggest sunshine problem. In those states in which meetings of two or more are covered, *any* interaction between two people who are involved with the same covered body is forbidden, whether at the drinking fountain or over the telephone.

4. Are staff meetings covered? In most states meetings of public officials with their own staffs are not covered by sunshine law, though staff reports to a convened body would be. This issue has caused relatively little trouble, though occasionally the question has arisen of whether or not a meeting was actually a "staff" meeting. Connecticut and North Carolina, for example, expressly exclude staff meetings.

5. Are faculty meetings covered? In many states this question is not specifically addressed by the law, nor has it been adjudicated. Where the question has been dealt with, the increasing tendency of faculties to perceive themselves as employees (in opting for collective bargaining contracts) rather than management has led to determinations that faculty meetings are in essence staff meetings. It was decided in a 1983 Florida case, *Wood v. Marston*, that when a faculty committee has decision-making authority, openness is then required. (In that case the faculty of the University of Florida School of Law made recommendations while searching for a dean.) During discussions in North Carolina during the late 1970s held as part of an open meetings law rewrite process, the media made it clear they were not interested in covering faculty meetings, and there is now a state-wide understanding that such meetings need not be conducted in the open.

6. Are electronic meetings covered? More and more states are specifically including electronic meetings, via serial or conference telephone calls. In many states, a meeting is now defined as an assembly of a "quorum, corporal or electronic." The attorney general's office in Illinois has pointed out that in that state, electronic meetings actually provide more opportunities for public involvement than corporal meetings do; often agencies will meet via a conference call that joins three cities, in each of which the public then has access to the meeting. A few states specifically describe the circumstances under which electronic meetings may be held, and North Carolina permits an agency to charge listeners up to $25 each to cover the cost of additional equipment

required to meet this requirement. New Mexico is unusual in its refusal to permit public meetings via the electronic media; its position is based on the argument that such meetings are too difficult to open to the public.

Exemptions

As Kaplowitz pointed out in his 1978 study for the Association of Governing Boards, "The most fundamental question involved in governance under Open Meeting laws is the determination of those topics that warrant a board's moving from public into Executive session." While the general construction of sunshine laws emphasizes one element of the public interest—the public's right to know—it is in the areas identified as exempt from openness requirements that the other two elements of the public interest are acknowledged. Thus, as shown below, the individual's need for privacy and the institution's mandate to fulfill its public functions effectively receive some protection in the permission to conduct certain activities in private.

The rationale for carving exemptions out of an open meeting law has been expressed in the New Mexico statute, which says its purpose is "not to unduly burden the appropriate exercise of governmental decision-making and ability to act." A similar sentiment can be found in the Wisconsin statute, which seeks openness for "the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Proponents of such exemptions claim it is impossible to prevent certain kinds of discussion from occurring in confidence; many seek additional exemptions. Critics assert it is not necessarily so; Gillmor and Barron's classic media law textbook calls the use of executive sessions an "evasive action" on the part of an institution. The governor of Florida has called for a review of exemptions to that state's law, fearing that the increasing number of exclusions has weakened the law's effectiveness. In a statement to the House of Representatives of that state the Speaker implied that such multiplication of exemptions was not due entirely to chance or to innocence:

> Fifteen years ago this state began an unprecedented experiment in open governance. . . . What a tragedy it would be if we were to permit that experiment to fail. Florida's commitment to government in the sunshine has been threatened by the passage of far too many exceptions, many of them buried in large bills which have escaped the attention of most legislators.

Four kinds of argument are used to defend confidential discussion of some kinds of business. The first stems from recognition of the individual right of privacy. The other three derive from the public interest in efficient functioning of public institutions.

1. Certain kinds of discussion can damage an individual if held in public. This is the argument used to exempt discussions about individuals. Those exemptions can either be narrow (only those discussions that might directly impinge upon an individual's privacy or damage his or her character are protected) or broad (any discussion regarding individual employment or other individual personnel matters is protected). No case is made for exempting discussions about personnel policy in general.

2. Some business simply cannot be conducted meaningfully in public. Examples of exemptions established using this argument would include for-

mulating strategy for negotiations with a collective bargaining unit, the negotiations themselves, and consultations between a board and its attorney regarding strategy for pending or current litigation.

3. It might not best serve the public's interest to discuss some matters in public. It is argued, for example, that deliberating on real estate purchases or sales and many kinds of investment decisions in public can skew the market with unfavorable financial consequences for the institution and its public.

4. Some kinds of discussion can damage the institution if held in public. Discussion of the results of a presidential or governing board evaluation would fall into this category. Many argue that open presidential searches also damage institutions by causing a decline in the quality of leadership.

The kinds of exemptions just mentioned are pertinent to higher education and thus were considered when constructing the openness spectrum (see Appendix A). Other kinds of exemptions range from discussions of security matters to criminal investigations to parole deliberations to medical discussions. (The exemptions of some states provide special insights into local preoccupations—only Texas exempts discussion of mineral and oil matters, while West Virginia permits confidential discussion regarding the conduct of war.)

Rules for Executive Sessions

Almost invariably executive sessions are limited in scope to discussion of the particular topics for which they have been closed, and meetings are generally closed only after voting in open session that closing the meeting is appropriate in a particular case according to a specific exemption. In most states a majority vote only is required to close a session in accordance with exemption rules. Some states, however, require a two-thirds vote. And in Oklahoma, though state law demands a majority vote, the constitution of the Board of Regents of Oklahoma colleges is far stricter, requiring a unanimous vote before a meeting can be closed. In some states notice and thus a time lapse is required between the decision to close a session and its actual closure. In others, a time limit on the order of 30 minutes is established for executive sessions.

Often minutes of executive sessions are required to note time, attendance, and topic(s) discussed. In cases where motions are made and votes taken in closed session, these too must be noted, with a vote by vote listing. (New Hampshire requires such votes to be disclosed in public within 72 hours unless that would render the action taken ineffective or cause damage to a person or the institution.)

Some states require complete transcripts to be made of meetings in executive session, which usually may remain confidential unless needed as evidence in litigation or until there is no longer need to keep those minutes confidential; Oregon and Vermont, for example, require that minutes give a "true reflection of the matters discussed" and the views of participants.

In Oregon closed meetings are open to the special class of the news media, with the proviso that confidential material not be reported. Missouri stresses that *all* members of the public must be excluded from executive sessions, while some other states permit those who are providing information or being considered for office to be present at executive sessions.

Sanctions

Four kinds of sanctions are used in various combinations by the states should their sunshine laws be violated. In some cases the level of imposition of sanctions increases with repeated violations, and may be levied either against individuals (in which case showing that a particular individual resisted violating the sunshine law might protect him or her from sanctions taken against other members of a covered group) or against the body or agency as a whole. All citizens of a state have standing in almost every case; in many places, the attorney general's office is also free to bring action. Action must be brought within a specified time period, generally under 120 days, and some states require intent to violate the law be shown as well as proof of the actual act.

1. *Voiding the action.* Declaring an action taken in contravention of the sunshine law null and void is the measure most commonly used. In some states, an illegal action can be made legal simply by retaking the vote in public. In most, the entire process must begin again. However, voiding actions is not always accomplished simply, and the difficulty of imposing this sanction often requires weighing a challenge to an action altogether. Many states permit the court to decide if an action should be nullified. A few states will nullify any but financial decisions made in contravention of the law.

2. *Equitable relief.* Equitable relief remedies, often including a writ of mandamus, or injunctions, or both are used by four-fifths of the states.

3. *Civil penalties.* About a quarter of the states impose civil fines, often nominal, upon groups that sidestep open meeting requirements. In some states, a public official may be removed from office for repeated violations.

4. *Criminal penalties.* About two-fifths of the states can take criminal action against offenders, with sentences that include fines or jail sentences or both, often increasing in weight with repeated offenses.

Miscellaneous

Sunshine laws almost always include detailed notice provisions, and occasionally describe requirements for locations in which public meetings are to be held. Provisions for minutes of open meetings also are almost universal, while a few states require distribution of agendas beforehand.

Changes in Sunshine Laws

Almost all of the state sunshine laws have been amended since they were first passed. Most amendments have served to broaden the coverage and increase the depth of application of sunshine laws. By the 1980s, the general shape of the laws had been established, and amendments now tend to address finer levels of detail. Recent amendments have added a few exemptions, made more definite the procedure by which meetings can be closed, and in general strengthened the laws.

In the past few years:

- Arizona has expanded its coverage to additional government bodies, improved its enforcement provisions, and clarified the circumstances under which closed sessions are allowed.

• Arkansas has specified that only personal matters that invade privacy are to be exempted.

• California strengthened its purpose statement, emphasizing the sovereignty of the people and their right to information.

• Florida broadened its definition of covered bodies.

• Hawaii extended sunshine requirements to subdivisions of covered entities, added a clause that permits public participation in public meetings, and restricted the exemption for legal discussion to only discussions concerning actual or proposed litigation.

• Iowa exempted discussions of labor strategy.

• Minnesota added a requirement that printed materials related to agenda items be distributed before an open meeting.

• Nebraska added a public interest criterion for closing.

• Nevada added a provision to void actions taken in violation of its sunshine law and extended its rules to student government.

• New Hampshire strengthened the right of its citizens to review notes of closed meetings and added a requirement that a vote to close a meeting be taken by roll call.

• New Mexico decided to allow employee evaluations to be conducted in private upon the employee's request and extended coverage to additional government bodies.

• New York exempted discussions about securities.

• North Carolina exempted discussions that investigate election frauds.

• Ohio extended the kind of discourse that must be conducted in an open meeting to include deliberation as well as final action.

• Oregon demanded greater specificity of topics when closing a meeting.

• Rhode Island added detail to the procedure by which meetings could be closed and added workshop meetings to those that must be held in the open.

• South Carolina exempted discussions of law enforcement agencies.

• Virginia covered electronic as well as corporal meetings.

Several amendments have been proposed recently but were not successful:

• Florida attempted to protect the college and university presidential search process by a specific exemption, and repeatedly proposed in that state to review all existing exemptions and establish a standing committee to centralize all proposals for exemptions to the open meeting law in the future.

• Minnesota attempted to extend the personnel exemption and add a purpose clause.

• New York tried to strengthen the penalties for violating the sunshine law and to require minutes detailed enough that the right to private deliberations on specific matters could not be abused.

• Texas tried to protect specifically the presidential search process (similar to the proposed amendment in Florida).

• Vermont attempted to add a numeric definition of a meeting (a quorum), add the possibility of voiding action taken in contravention of the law, cover electronic meetings, specify the nature of required meeting notice, and include a provision for voicing public opinion during an open meeting.

CHAPTER THREE

The Sunshine Environment

The Ecology

It is difficult to separate the effects of sunshine laws from those of other events, laws, and trends; open meeting laws are synergistic with other influences in the education environment. Some pertinent factors with which sunshine laws interact include the following.

1. Most colleges and universities must deal with budgets that do not keep pace with their needs or with inflation, making decision making more difficult in general. This raises the level of systemic campus tension and increases the number of potential adversary relationships among departments and programs that compete for limited funds.

2. Colleges and universities have not escaped the growing litigious paranoia of American society at large; as a result, the sunshine laws are viewed by some as yet another device for challenging administrators' actions. The fear of "imminent litigation" can prevent effective discussion and action by college and university administrators.

3. State governments are paying more attention to higher education than they used to. Budgets now often are examined line by line. Judicial review of university and college actions—for many years considered a usurpation of university and college rights with the potential for infringing on academic freedom—has increased. Complicated administrative systems offer numerous commissions the opportunity to scrutinize the activities of higher education. Governing boards and presidents often feel less free to act independently than they have in the past.

4. A rising demand for widespread participation in college and university governance since the 1960s has led to a decentralization of power throughout most academic communities and multiplied the ways through which the public may be involved in decision making. Students, faculty, and staff now are represented on most governing committees and search committees in many states. This can go to extremes: One presidential search committee in Montana thought it had gone far enough in ensuring every concerned constituency had a voice in the search when it included "cheerleaders and groundskeepers" among others on its committee—but then the extension agents decided they needed a presence in the search as well. Some argue that, "If you have a rainbow committee, you don't need sunshine, too."

This demand for participation betokens a lack of trust not just in the institutions in which participation is sought, but also in the very processes of democracy. If the procedures by which representatives of the people are

chosen were considered reliable, there would not be such a powerfully expressed need on the part of others to get involved in what the representatives do and how they do it.

5. Open meeting laws reinforce horizontal systems of decision making. Universities, along with hospitals, exemplify the way decisions are formed more and more by lateral consultation among peers, rather than by vertical systems ("recommendations up, orders down"). Consultative decision making and an emphasis on committee work spreads—throughout the university community—the effective power to influence outcomes.

6. As the attorney general of Oregon has commented, "Openness in government in any state cannot fairly be evaluated without examining its laws governing access to public records as well as its laws governing access to meetings." Open meeting laws are intertwined with open records laws; in several states they are one and the same law, under the heading "freedom of information."

Although it would seem the two kinds of laws work hand in hand, this is not always the case. At times, the attempt to work within the constraints of one brings a governing body into conflict with restrictions of the other. For example, details of confidential discussion permitted by a sunshine law can be forced into the open under open records provisions. Conversely, information that should be in the open according to a sunshine law might be protected by open records exclusions. At the University of Florida, for example, an applicant for dean in a wide-open search process was at the time an employee of the school, and thus had protection under open records exclusions for her employee records. She waived the right, preventing the conflict from requiring a judicial resolution.

7. Open meeting laws interact with privacy laws. In a state like Montana, which has a strong constitutional provision protecting privacy, the public's right to know butts head to head with the right to individual privacy. New York's new privacy act is considered to be a key factor in future interpretations of its sunshine law; and in Minnesota the Data Privacy Act also is pertinent.

8. Characteristics of the press, the constituency most interested in sunshine laws, differ from state to state and from time to time. It's the difference between Queensberry Rules and brass knuckles. In Montana, for example, the press has been characterized as being extremely proud of its investigative reputation. In a state where everyone knows everyone and combativeness is the operating mode, "People use the press to get at each other," and, "If somebody's ox is being gored, they go to the press and give them a story." Sunshine law challenges appear often, and appointed and elected officials are treated alike.

In Texas, on the other hand, a history of ample funds for academia and a general mood of optimism have contributed to an interest in getting the job done rather than finding out who did what. As a result, the press overall has been what one university administrator called "more gentlemanly," and appointed officials are treated more delicately than those who have chosen to enter the public eye through the election process.

In Pennsylvania, higher education administrators assume it is the "maturity" of the press, their understanding of what damage an open search process can lead to, that prevents journalists from challenging the state's relatively closed procedures. (The journalists' riposte is that attendance at college and university meetings just isn't interesting.)

"Names make news." The press everywhere is more absorbed in the application of sunshine laws to personnel matters than to the conduct of financial affairs. Investment decisions, for example, would seem to be at least as newsworthy as personalities, but apparently this is not the case. The press is widely regarded as seeking "gossip" with "horse race value" in choosing which matters to pursue.

It might be worth noting that the higher education beat is often assigned to younger and less experienced reporters with a relatively unsophisticated perspective on complex administrative, political, and financial affairs. One chancellor of a statewide university system commented, "I feel as if I spend most of my life educating cub reporters." Such reporters might aggressively press demands for open meetings from an ambition to make a name for themselves. In Montana a reporter from a university newspaper, who is already a stringer for UPI, routinely attempts to force into the open any meeting held in executive session.

Finally, the commitment of journalists to openness is sometimes inconsistently applied, leading to the perception that the media hold a double standard. In Iowa, for example, the press clamored for openness in the presidential search process, but the prestigious University of Iowa journalism school resisted disclosing the names of its own candidates for the school-owned and run television and radio stations. The same editor of a newspaper that seeks disclosure of the contents of a college or university president's evaluation, as in the recently decided *Missoulian* case, receives his or her own evaluation in confidence. The press's pursuit of openness also can be sporadic; since one newspaper obtained the release of several hundred names of candidates for president in an energetic search at Texas A&M, more than a dozen presidential searches have been conducted in that state without any request at all for disclosure.

The press, like everyone else, has political interests at stake when it deals with open meeting laws. And politicians have a particular interest in the shape of the journalism product. In a recent Montana case, this seemed to be the governing factor. The *Missoulian* challenged on openness grounds the procedure used to select a new president for the University of Montana, but within the month it took for the newspaper to attempt to void the decision to hire, the new president had already proven enormously successful. When pressed to name an "essential party"—the new president—for the suit to continue, the newspaper chose instead to drop its action, leading to speculation that the paper decided a vendetta against a popular university president would not be politically expedient.

The Atmosphere

Several generalizations can be made about the atmosphere of university governance since the advent of sunshine laws.

1. *In the schools*: Openness dominates the mood of university governance. Across the board, university administrators almost uniformly perceive they are operating within an environment of extreme openness. (Only one administrator in Pennsylvania characterized the level of openness in that state as "fairly meek," while all others interviewed described it as "extremely open.") In critiquing our 50-state sunshine spectrum, comments by attorneys

general who disagreed with our evaluations have uniformly been in the direction of making their states appear more open.

Openness is here to stay. Proponents and critics agree that the relatively new condition of openness is a permanent one; many expect to see openness provisions applied ever more widely. Exceptions to this viewpoint can be found among the media, where some fear the Reagan Administration's trend toward restricted access to government information, restricted free speech for government employees, and increased numbers of Freedom of Information Act exclusions might also eventually play out in the realm of open meetings.

The concept of openness is accepted. Even those who most oppose the operation of a government in the sunshine concede the concept makes sense. Despite reluctance on the part of regents in Iowa to establish an open presidential search process, for example, our interviewees gave the impression they still believe the public's business should be conducted in public. In Pennsylvania, college and university administrators say they gain from the involvement of those other than administrators through openness procedures. Sometimes public institutions adopt such rules before the law requires it, as in Pennsylvania and Minnesota. "Many schools," noted one observer familiar with institutions across Pennsylvania, "found the imposition of the sunshine law helpful because it made them set guidelines."

The question of what openness means is never completely answered. Almost every time a presidential search begins or a contentious situation crops up the issue is raised again of where the limits of openness are. In the words of one university administrator from Texas, "I believe in the people's right to know. I'm just not sure how much they should know, or when."

2. *In the press.* In state after state universities are perceived as the worst offenders among state agencies when it comes to complying with state sunshine laws. It is said that in Texas, where the University of Texas at Austin by its own admission operates as "circumspectly" as possible, the enactment of the state sunshine law was motivated largely by media frustration with the University of Texas Board of Regents. In North Carolina an attempt to apply the sunshine law to the university in the early 1970s forced a complete rewrite of the law.

Higher education administrators argue that open meetings laws were constructed with other kinds of agencies in mind, and as a result it is especially difficult to apply sunshine provisions to the kinds of information and decision-making procedures found in an academic setting. Thus it is more difficult for educational institutions to find accommodation within the law for the organization's need to protect certain processes in order to function at all. In addition, it is argued that the needs of academic freedom should to some degree outweigh the public's right to know details of college and university decision making, and that the leadership needs of academia—and thus the process used to find those leaders—are unique. The academic freedom argument, for example, was one prong of the unsuccessful attempt in *Wood v. Marston* by the faculty of the University of Florida School of Law to close its dean search process.

Critics believe the academic freedom argument is overstated or completely misplaced; some say a genuine commitment to true academic freedom would actually go the other way and require *all* discussion to be in the open. There is also a sense that the ivory tower mentality leads to a misperception of characteristics shared, or not shared, with other public agencies, and it is

suggested that the generally private people attracted to academic life tend to define the requirements of privacy more broadly than the general populace does. In general, the press is not convinced by any of the lines of argument by which academia attempts to distinguish itself from other bodies covered by state sunshine laws. "It is especially upsetting when universities deviate from the law," noted one media attorney, "because they are so well respected."

Litigation Applying Sunshine Laws to Higher Education

Sunshine laws seem to be particularly problematic in their application to higher education, judging by the relative number of opinions by attorneys general and decisions by judges dealing with this matter. A review of the cases and decisions summarized in Appendix B shows that most challenges stem from dissatisfaction by those who are penalized by decisions made in closed meetings—often faculty members who lose their positions. Boards of Regents frequently attempt to conduct their operations in secret, but almost invariably lose when there is a battle over private meetings. Very often challenges arise to test the depth of coverage of sunshine laws within an organization; those decisions usually go in the direction of liberal construction and thus force committees, advisory boards, and so on to be open.

CHAPTER FOUR

The Benefits of Openness

The positive effects of sunshine provisions in governing higher education are somewhat abstract and diffuse. In general, it is that element of the public interest favored in the general construction of the laws—the public's right to know—that is best served.

The extent to which claimed benefits are actual is difficult to measure. Despite direct representation on so many governing committees, many faculty, students, and staff say they feel they have no voice in how decisions are made. At the same time representatives' absence from and lack of involvement in public meetings contradict claims of their interest at the root of their own arguments for participation. (It is, after all, hard work to try to understand the details of administrative matters such as budgets.) Despite open records and open meeting laws, there is still a sense that business is conducted in secret; sunshine laws don't seem to mitigate the public mistrust of institutions. In the words of one student newspaper editor, university administrators "always give us the run-around. They feel they don't have to tell us anything." This, of course, is no new phenomenon, but rather the permanent condition of tension between student papers and school administrators. (As a student editor nearly half a century ago, I had the same experience.) Still, the following benefits of openness can be observed.

Public Participation in Decision Making

There is more public involvement in and knowledge about decision making by public officials, which has two effects. First, it is believed that the atmosphere of shared governance creates increased confidence in and acceptance of the governing process. Second, more, and more varied, input into decision making generates an increase in the quantity, if not the quality, of concepts in the marketplace of ideas.

Protection Against Corrupt Decision Making

Open meetings are thought to protect against fraudulent, mistaken, or casual decision making; to protect officials from unfounded rumors; and, proponents say, to increase the accuracy of fact finding. Sunshine laws enhance the accountability of public officials and greater preparedness on the part of those who are reluctant to appear in the public eye as shoddy in their work.

Reduction of Some Types of Procedural Problems

The institution of open meetings removes one kind of procedural objection to a substantive issue. When an issue is raised by one side, the other can't argue that it should be discussed in a more open process—the process is already open.

Consultative Administration

Under sunshine, colleges and universities are finding they have developed a more consultative approach to administration. Often the range of constituencies a university is concerned with by law need not have a voice in many kinds of decision making. However, administrators find consulting with those constituencies produces better decisions and more efficient administration. Consultation allows decision makers to have a better sense of how constituents will react to an action, and gives the same constituents a better understanding of the rationale behind decisions. While consultation makes the decision-making process more cumbersome, it could reduce the need for costly litigation later. "Students and faculty may not like your decisions any more," comments one Pennsylvania administrator, "but at least they know why we make them." "Texas has changed a lot" since the open meeting law went into effect, says an administrator from that state. "We have a lot more faculty input into what we do now."

Educational Value

Openness is a persuasive educational tool to use in developing a statewide public sensitive to the needs and attributes of higher education. It can be a critical aspect of the relations between the university and the public it serves.

CHAPTER FIVE

The Costs of Openness

While the benefits of openness seem to accrue to the public's right to know, the costs of openness can be understood in terms of the damage caused to the other two elements of the public interest: individual privacy and institutional operation. Those costs

- constrain the nature of discourse
- alter the decision-making process
- affect concrete administrative costs
- pose specific procedural problems (such as with the presidential search process, evaluations of presidents and governing boards, and accreditation procedures)
- encourage mediocrity
- cause an atmosphere in which the law itself is brought to disrepute

The costs of openness tend to be far more focused and therefore more visible than the benefits, as Ann H. Franke of the Association of American University Professors (AAUP) has written.

Effects on the Nature of Discourse

The effects of openness on the nature of discourse are the most far-reaching of all, for they cause the very situation in which other costs and benefits arise. These changes in the nature of discourse are difficult to discern, and long have been discussed. Witness the long-standing debate about the consequences of using cameras in the legislature and courtroom: When they are allowed it is on the basis of philosophical argument rather than analysis. Henry H. Perritt, Jr. and James A. Wilkinson break down a parallel kind of discourse—labor relations—into four subprocesses: distributive bargaining, integrative bargaining, attitudinal structuring, and interorganizational bargaining. Each subprocess, they find, is less effective if it must occur in the open.

The Administrative Conference of the United States has found the same thing in the operations of the federal government. It noted that the sunshine law reduces collegiality in agency decision making, thus altering the nature of decision making away from its original intent in many government agencies. The ideal of collegial decision making was described by the first Hoover Commission's Committee on Independent Regulatory Commissions:

> At its best each decision reflects the combined judgment of the group after critical analysis of the relevant facts and divergent views. This provides both a barrier to arbitrary or capricious action and a source of decisions based on different points of view and experience.

Discourse among trustees and committees before and after sunshine laws were implemented was compared. This comparison revealed several effects on collegial decision making and the nature of discourse as perceived by members of those boards and committees, staffs of those insitutions, and observers of the education scene.

Loss of candor. There is universal sentiment that public discussion by a decision-making body will not be as honest as that held behind closed doors. Members of the group might want to present a united front to their constituents, preferring not to criticize or appear to undermine members of the group or its leadership in front of others. The group might not want to expose weaknesses of programs or individuals to third parties less sensitive to the nuances and complexities of certain situations or to day-in, day-out administrative needs. Some might prefer to hide ignorance or personal positions on specific matters from third parties. Others might not want to present tentative or unpopular solutions to problems or to present pertinent information that could have adverse political, economic, or social consequences if revealed in public. Some members might not want to speak out against a present or future boss or colleague. Boards also tend to restrict creative problem solving or speculation ("what if?" discussions) for fear unusual ideas or subtle perceptions or predictions offered as stimulation will be misinterpreted. "Though we always hope for more honest discussion," says one Iowa administrator, "we have to live with the realities."

Loss of freedom of speech among decision makers. In the very attempt to generate greater freedom of speech between citizens and their representatives, free speech among those representatives can be curtailed. They tend to discuss less and to avoid presenting varying points of view. (A First Amendment defense has actually been raised in several court cases to defend closing meetings, but has consistently failed. The courts have said that the public's right to know outweighs any damage to freedom of speech argued by defendants. They distinguish between actual prior constraint on speech—which does not occur in such cases—and predicted constraint of speech, which could be perceived as contrary to the speakers' interests.)

Discourse becomes simplified. Because intricate details of a problem under discussion could be missed or misinterpreted by a listening audience relatively unfamiliar with the topic, the important but subtle details of many issues never get aired. Complex discussions become distorted as they are transmitted through the mass media or word of mouth, at times causing ill will where the target is made of straw, and problems where none exist. "Students often lack a sense of proportion and get distracted from the central issue," complains a Pennsylvania trustee. The result of strict adherence to procedure is to paint in black and white those matters that are filled with shades of gray, eliminating the creative complexity of discourse that might have led to the most satisfactory solutions. As Arthur Simon (1977) noted in his examination of the effects of sunshine laws on higher education, openness "limit[s] behavioral standards of participants by lowering their decisional norms to the community's level of prevailing political sentiment." Boiling down a matter to two sides oversimplifies the issues involved; most important questions have five or six sides at least.

Discourse becomes trivialized. Oversimplifying complex issues or avoiding difficult topics often means the most important matters never get discussed

at all. Instead, discussion in open meetings will center on trivial matters resolved relatively easily.

The net effect of the impact of openness on discourse is to reduce the quantity and quality of information used in decision making. The roles of decision makers have also been changed, for to function in a collegial manner a board or committee must be free to participate together in open discourse. The result in some situations was described by a trustee from Iowa: "We can't go into executive session to discuss an issue of great sensitivity, such as organizational problems. So we just don't govern as much." In Texas it was noted that "It takes longer to resolve matters this way. We take less action and provide more direction instead."

The Administrative Conference of the U.S. says that at the federal level sunshine procedures have shifted the pattern of decision making away from collegial exchange and toward one on one encounters, transmitting views through staff, and exchanging memoranda or notes.

Even in the very "open" state of Florida, a court decision (*Bennet v. Warden*) sounded a cautionary note:

> It would be unrealistic to require that every meeting, every contact, and every discussion with anyone from whom executive officers . . . would seek counsel or consultation to assist in acquiring necessary information, data, or intelligence needed to advise or guide authority by whom they are employed be a meeting within disciplines of the Sunshine Law.

Administrative Costs

Openness generates measurable administrative costs. Satisfying notice requirements, providing agendas, recording and transcribing meetings, and so on, require commitments of time, labor, and material resources. Notice requirements also force administrators to move more slowly as they wait for fixed time periods to elapse before they can address a problem, with consequent hidden costs. Several states require a schedule of meetings to be published at the beginning of each year, incurring the time and labor costs of planning that might internally be perceived as unnecessary. The need to facilitate public attendance at meetings means that rooms and electronic equipment have to be reserved. "Complying with open meeting requirements takes more and more energy," summarizes one adminstrator.

In states with strong commitments to openness, such as Florida and Minnesota, such costs are not noticed because openness procedures are well-embedded in general administrative procedures and are considered simply good practice. At the opposite end of the spectrum, however, Pennsylvania administrators will say only of the additional procedures and their concomitant costs incurred by openness, "We've learned to live with it." At present only governing boards must operate in the sunshine in Pennsylvania, but a bill that calls for extending open meeting provisions to committees is being considered in the legislature. Concerning that bill, one administrator remarked, "If that passes, it will be a real headache." (But of course reducing headaches among administrators is not an overriding objective of public policy.)

In all states, imposing additional administrative procedures on decision makers means that people who are hired to do one thing wind up doing some other, lesser, thing. Time that could be spent moving forward is spent treading water, reducing activity more directly in the public interest.

Effects on the Decision-Making Process

Openness alters the decision-making process in four ways. Together, university and college administrators argue, these changes in the process cause the quality of decision making for an institution to decline seriously, hampering its ability to respond rationally to its environment and to exercise its natural instincts toward survival.

1. *Altering when decisions are made.* A prudent institution that would attempt to foresee potential problems and forestall them before they arise, address minor irritants before they become major problems, and institute regular reviews of its program to prevent difficulties is penalized under open meeting laws. A public audience can turn a description of possible events into a schedule of predictions, a suggestion of an irritant into a crisis, a range of alternatives into *faits accompli*, and constructive criticism into major program weaknesses. Thus organizations that operate in the open tend to squelch their urge to exercise foresight and good planning, and find themselves only dealing with current problems. A reasoned and well-thought-out decision-making process becomes crisis-oriented, long-term planning turns into short-term, and short-term planning becomes first aid. "It slows down our response times," notes a presidential assistant from Minnesota. "And this is especially problematic because we must address four to five times more issues annually than a university faced 30 years ago. As a result, we're less competitive."

2. *Altering who makes the decisions.* One kind of response when top-level administrators believe a kind of significant discussion simply cannot be held in the open despite the demands of sunshine laws is to kick the decision downward in the hierarchy until it gets to a point where the decision-making group or individual is no longer covered by those laws. Thus line decisions are turned over to staff, and matters that should be dealt with at the highest levels of management are handled by those with far less training, knowledge, and experience. One university attorney put it this way: "Openness cuts public governing boards off from the most important decisions. They don't get involved until the decisions have already been made." A second kind of response is to move the decision making from boards to individuals so decisions that should be made collegially are made unilaterally by the chief executive.

3. *Altering what decisions are made.* With the distortions to discourse just described, the same arguments and information might not arise during deliberation by decision-making bodies that might surface during closed sessions. As a consequence, the content input that shapes a decision changes, and the outcome itself is oftentimes different from what it might have been were members of the body solely concerned about finding the best solution to a problem, and not about how they appeared while they were doing it.

4. *Altering why decisions are made.* Rather than making decisions as necessary to run the institution best, decision making in the open can become a strategy tool for the administration's relations with its constituencies. Negative decisions might be avoided and positive decisions held up until they can serve a strategic use—perhaps just before an evaluation or an election. A movement to eliminate a popular but poorly rated program could be deflected toward a less popular one, though perhaps one highly rated or critical to the state economy or both. Tenure decisions might be made on political, rather than academic, grounds. In general, the "squeaking wheel" will be served over the public interest.

Elevating the Power of Procedure

Openness encourages reliance on procedure. With increasing openness, administrators lose their sense of control over the governing process. "They lose their sense of timing—they don't know who knows what when," says one scholar of education administration. Consequently, leadership of universities retreats into procedure. This reliance opens the door to replacing substantive discussion with procedural objections. A new idea can be inhibited, for example, by claims that not enough copies of the proposal were circulated.

Emphasizing procedure also tends to bring to a vote things that weren't voted on in the past, such as issues about academic curricula. Matters that used to be handled flexibly, such as faculty sick leave, are forced into contractual constraints rather than being left to administrative discretion. And with formal voting procedures come endless discussions about who gets to vote on what, replacing discussion that in the past worked toward consensus decision making on substantive issues.

Openness Can Stifle Innovation

In opening the decision-making process, conservative solutions to problems are favored while new ideas are discouraged. There is less brainstorming and more use of procedural objections to ward off innovations for which the public is unprepared. As one adminstrator told us, the status quo is the only decision that cannot be vetoed. This trend runs counter to the growing awareness that healthy organizations must have imbedded within them a propensity and ability to innovate—and that freedom for exploratory discourse is a fundamental part of that ability.

Effects on the Evaluation Process

Openness alters the evaluation process. A canon of good governance requires periodic evaluation of programs and of organization leadership, such as presidents and governing boards. Yet the requirements of open meeting laws can make such evaluations impossible at worst and meaningless at best.

If comments are to be made public, the individuals contacted by independent evaluators will not be frank about the abilities of a president with whom those individuals must work. Evaluators will be reluctant to display in public what they perceive as the weak points of a president, for fear any sign of weakness will be seized upon by the public as fatal, weakening the president's ability to govern. Governing boards won't want to discuss an evaluation among themselves or with the president for the same reason; and as a result the president will not benefit from a real evaluation. "If you want to have an adversarial situation," comments one Montana observer, "conduct a presidential evaluation in public; but if you really want to use evaluations to improve job performance, you can't do it in the public eye."

In many states the evaluation process is protected as among the personnel matters exempted from the open meeting requirement. In other situations, states never conduct a formal evaluation process, avoiding the potential problem altogether. In the early 1980s the University of Montana decided that a more formal evaluation procedure would benefit the institution and its lead-

ership and sought to approach the process more professionally. But the *Missoulian* immediately challenged the attempt on open meeting grounds. Ultimately, Montana's unusually powerful constitutional privacy provisions won out and the contents of the presidential evaluation were allowed to remain confidential. It was reported, however, that in the future "presidential evaluation reports will probably be sanitized."

At the University of Minnesota a recent 10-year evaluation, by an external consultant, of the strengths and weaknesses of its president was conducted orally and its results presented to regents one by one and never discussed as a group. This procedure was adopted to place the process beyond the reach of the sunshine law, on the assumption that such an evaluation, to be worth anything, must be confidential. The *Minneapolis Star & Tribune* challenged it in court, however, on open records grounds, for the Minnesota Government Practices Data Act covers oral information that would have to be made public were it written down. The paper secured a court order forcing the regents to record what they remembered of the oral evaluation. A memorandum accompanying the court order admitted that the disputed evaluation was of the president's "performance and the identification of areas that require strengthening or high priority attention," yet the "*Minneapolis Star & Tribune* seeks and is entitled to access to that part of the report which is not a privileged employment evaluation of" the president. Each regent who had talked to the consultant solemnly signed an affidavit that there was nothing in the conversation that didn't fit that exception.

The same kinds of problems occur when governing boards attempt to evaluate themselves. Ultimately, this can prevent the process from occurring altogether, pulling the rug out from under attempts by governing boards to improve their ability to function. This occurred six years ago at the University of Minnesota, where the board of regents had regularly participated in a self-evaluation every five years, as recommended by AGB. As challenges to the state sunshine law arose, however, it was decided by the courts that the statute applied to every meeting of a majority or a quorum of any body, whether meeting formally or informally. The board felt that collective discussions about the self-evaluation process would be useless if held in public—and so they just stopped fulfilling that part of the process. Now, while individual board members do fill out a questionnaire every five years, the board as a whole never gets together to discuss the results.

The University System of South Texas recently received a favorable ruling from the attorney general's office in its attempt to protect preliminary documents produced as part of an accreditation procedure. Among the arguments used, the system claimed that disclosing the papers would destroy the accreditation process altogether:

> The public interest in confidentiality of preliminary self-evaluation materials outweighs the public interest in disclosure when such information used for a purpose and in a manner for which it was not intended causes irreparable damage to an institution under the aegis of sunshine laws.

A similar argument was used in a 1973 Texas attorney general's opinion where it was ruled some meetings could be closed if the requirement that they be open would interrupt the agency's activities and cause unnecessary delays in agency actions.

Effects on the Search Process

The effects of openness on the presidential search process often seem the most extreme of all. The results can be dramatic for the institution and tragic for the individual, for the role of president has high gossip value for the press. As with other areas of impact, the degree of influence of sunshine laws varies from state to state. In Florida, for example, the entire process, including the actual interview of final candidates, must be conducted in the open and often actually occurs before television cameras. At the other extreme, as in Pennsylvania and many other states, the personnel exemption protects the entire presidential search process up through announcing the final selection, subjecting candidates only to the danger of potential leaks.

Most states with protected search processes, however, find it is still in their best interest to release the names of candidates on the final short list and allow the public to participate and interact with candidates as part of the final steps of the search process. This serves as a safety valve, helps take the "sunshine" pressure off the earlier parts of the process, and can even allow the public to interact with candidates during the final steps of the process.

In between these two extremes lie the vast majority of states that must open their processes to the degree of at least disclosing the names of either some or all candidates. Three kinds of damage to the search process are cited.

1. Many believe that most of those who would be the best candidates remove themselves from the pool, or never allow themselves to get into the pool, deciding they don't want a position they would have to "run for" in public. They might withdraw because their effectiveness would be reduced in their current positions. Many of the most likely top presidents are already successful elsewhere. Should their current boards and constituencies learn they are even considering leaving, the ability of those presidents to function capably in their current positions would be damaged, often irreparably. It's a process to which a person who is employed and employable needn't be subject. Successful university presidents also might not want to risk losing a race for another position, letting it be known that, for whatever reason, they were not considered the most capable choice by those elsewhere. It has even happened that after top candidates are lost to a search committee as a result of openness procedures, a second, more abbreviated, search process must be held before a less-preferred president can finally be chosen.

2. The process undergoes the same kinds of distortions to discourse discussed earlier, leading to superficial discussions and letters of reference and other kinds of candidate evaluations loaded with the favorable half of the truth. Committee members often will not be willing to share potentially damaging information in public. David Riesman who, with his colleague Judith Block McLaughlin, is probably the foremost expert on presidential searches, says, "It is widely appreciated in academic life that letters of recommendation lose all credibility if confidentiality for them cannot be guaranteed." The same problems that can occur with an open evaluation process can occur here. Moreover, committee members might fear reprisal against their programs if they speak honestly but unfavorably against a candidate who ultimately wins—or an unsuccessful internal candidate with whom they must continue to deal. Thus the results of the process are skewed and information that could be vitally important to a search committee might not come out.

3. An open process is also subject to manipulation for political ends. The press can be used as a tool to generate an atmosphere of favor or disfavor for a particular candidate, or to prevent a rival campus from obtaining a president whose light would outshine one's own president's. Lobbying, letter writing campaigns, and smear tactics can all result from manipulated media coverage of a decision-making process.

These factors can combine to cause unpleasant situations. Judith Block McLaughlin offers the story of one candidate in a search process that was supposed to be confidential but leaked. Reports of his candidacy for one institution created enormous problems for him in his current position as president of another. Ultimately he lost the job he was currently holding and failed to be the choice in the search he was undergoing. With a reputation as a second choice administrator, he found it next to impossible to find any job at all and finally took a position with much less responsibility rather than continue unemployed. At worst, unpleasantness on the current campus can go as far as verbal and physical abuse of a candidate's family; at best, a president faces suspicion and distrust on the part of his or her board, faculty, and students.

To avoid these problems, many presidential candidates who are believed to present the best qualifications and are the most known quantities will refuse to be considered for a position if the search process must be held in the open. Even so, a president whose name was considered without his or her knowledge will have a difficult time persuading relevant constituencies that he or she did not connive in a "noncandidacy."

Proposals to amend sunshine laws specifically to exempt the presidential search process try to distinguish the role of university president from other positions of public leadership, and this is extremely difficult to do. The arguments that have been used to defend the use of confidentiality during the presidential search process have also been used to defend the need for privacy in finding a new horse racing commissioner—no one wants it known by a present employer that one is seeking a new position.

The argument that presidents chosen through an open process are less qualified than those chosen through more closed procedures is hard to verify; it is difficult to prove the relative competence of individuals, or to measure an event that hasn't happened. It is clear, however, that open searches result in a different kind of candidate pool than would otherwise develop. In a recent open search for a University of Florida president, for example, there were virtually no candidates with previous presidential experience available for consideration. Those who complain about an open search process still in general will say they in fact got very good presidents after such a procedure—but some will attribute this to sheer luck.

Often open searches produce just the person expected to have been selected behind closed doors. One state university conducted an extremely open search that wound up with three finalists: a white man who had risen through the state system, an older black woman from the south, and a white woman from the west. The white man was chosen. In another state, a thoroughly open search produced a white male university president known mostly for his abilities as a politician and for his friends. Openness is not necessarily a synonym for access by members of previously disadvantaged groups.

Encouraging Mediocrity

Openness can encourage mediocrity in performance. This problem arises not only from the presidential search process, but also from other aspects of the effects of openness on decision making. Not only can it be more difficult to obtain the best leadership, but it is next to impossible to get rid of those who are not so good, at both the administrative and faculty levels. If discussions about an unsatisfactory professor whose contract is to be terminated need to be in the open, that professor can sue for defamation. Thus administrators will often trade the long-term benefit of high quality faculty for the short-term benefit of staying out of court. An ineffective evaluation process reduces an administrator's incentive to improve his or her skills, also encouraging mediocrity.

Encouraging Criminal Behavior

When sunshine laws prove impossible to live with, public officials find ways around the law. In fact, many top administrators are not concerned about sunshine laws because they have incorporated subversion of those procedures in their operating methods. As one Texas attorney commented, "Sometimes you got to talk [to each other] the way you got to talk." Thus a very real cost of openness is its cost to the legal system—it creates a general atmosphere in which the law itself is brought into disrepute.

Wherever the bounds of openness are drawn some discussion will occur beyond the pale. Unrecorded telephone discussions or private meetings are probably the most frequently used means of getting around the strictures of sunshine laws. The notation procedure—decision making through sequentially commenting on a written memorandum—might successfully avoid open meeting laws, but would be subject to the rules for open record laws in most cases.

Is it better to encourage a class of criminal behavior that almost all public officials will engage in, or better to make it legal for those officials to make decisions in private about public matters? The former approach forces illegal behavior on those who seek to act in the public interest and could open the door to government takeover of higher education in the name of stopping criminal behavior. The latter approach might make it easier for abuses of sunshine laws to take place by encouraging private decision making when it is convenient for the public officials involved, though not necessarily in the best interests of the public.

Conclusion

The tension among the three elements of the public interest served by sunshine laws is inevitable and provides an ineradicable and productive challenge in and of itself. However, a skew in the direction of one of those elements causes problems that are recognized by the court of last resort, public opinion. The visibility of sunshine questions and frequency of disputes over the application of sunshine laws demonstrates that an appropriate balance has not yet been achieved. Some principles can be identified, however, that might help to determine just such a balance.

1. The interests of the community as a whole must be considered above the interests of any of its parts. The population to be served is the constituency of the whole, not of any special interest groups.

2. The presumption must be in favor of openness. Tendencies toward closure must be monitored closely, scrutinized strictly, and permitted only with narrowly defined exemptions from sunshine laws.

3. It must be recognized that openness is only one of three elements to be balanced in determining how best to serve the public interest. The way sunshine laws are put into effect must take into account the need to protect personal privacy. And the mandate to public institutions—to carry out their assigned functions effectively—includes a definition of the role of trustees and other decision makers that requires the collegiality of open group discussions. The particular balance among these three elements of the public interest will, of course, vary from institution to institution and from time to time.

4. The needs for individual privacy and organizational effectiveness can best be protected by using exemptions from sunshine laws, definitions of subject matter that can be discussed confidentially. In the case of higher education, there appears to be a wide (but not universal) consensus that an appropriate balance of the three elements of the public interest would allow—indeed, encourage—the following kinds of exemptions:

- personnel matters when a specific individual is being discussed
- developing collective bargaining strategy and the negotiations themselves
- the attorney/client relationship in discussions concerning actual or potential litigation
- real estate matters
- security issues
- evaluation procedures, whether of an individual, a group, a program, or the institution as a whole
- self-education sessions of governing bodies
- the presidential selection process

The press and institutions of higher education agree that providing information to the public is of the highest value. It is in fact the purpose of both kinds of organizations to convey usable information to the public. And they agree that such information transfer should both strengthen the democratic process and be a result of that process. With the balancing of the three elements of the public interest proposed here, sunshine laws are more likely to help the media, higher education, individuals, and the general public to accomplish those goals, and less likely to continue as a major bone of contention and a frequent source of litigation among them.

APPENDIX A

A Spectrum of Openness

To get a feel for the range of openness across all 50 states as according to application of sunshine laws, 25 characteristics of openness were defined. These characteristics were not determined by any scientific method but by personal response to the laws. Our focus on the governance of higher education influenced our selection of criteria. Because we could not think of a universally valid way of weighting the 25 characteristics, we did not weight them. They nevertheless provide a starting place for discussion and a set of intriguing comparisons of what the individual states mean by "openness" and how important they think it is. (Each criterion is broadly defined. For example, a point is given for criterion #3 if all final action must take place in an open meeting. Otherwise no point is given for that criterion.) The characteristics are as follows:

1. *Policy Statement.* A policy statement exploring the intent of the sunshine law and specifying that it should be liberally construed indicates openness. The California policy statement contains wording several other states use and in general indicates the tenor of such statements:

> It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.
>
> In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.
>
> The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

2. *No Bodies Explicitly Exempted.* All-inclusive coverage of state bodies (including agencies, commissions, boards, and branches of state government), without specifically exempting any in the wording of the law itself indicates openness. This characteristic indicates both the law's intent and its tenor. The judiciary is the body most commonly exempted by specific mention in many state laws; other bodies often exempted include parole boards, hospital staffs, law enforcement agencies, the executive office, or fee-supported agencies.

3. *All Final Action in Open Meeting.* In states that allow executive sessions closed to public attendance, openness is indicated by restricting such sessions to discussing issues and insisting all final action be taken in public. In such states, a great deal of detailed negotiation, bargaining, and argument remain hidden from public view, but the resulting action must still be in the open.

4. *Discussion in Open Meeting.* Including discussion, as well as actual decision making, in the definition of open meetings is an index of openness. States requiring deliberations toward a decision to be held in public intend to allow the public to be fully informed of the thinking behind policy positions. As noted at 38 ALR3d 1079, a compilation referred to by several states for elucidating the validity, construction, and application of their statutes, *Times Publishing Co. v. Williams* (1969, Fla. App.) 222 So. 2d 470, held that "Every thought, as well as every affirmative act, of a public official as it related to and was within the scope of his official duties, was a matter of public concern. . ."

5. *Gathering Information in Open Meeting.* Discussion toward a decision is interpreted to be limited to deliberation on a particular policy position or rule to be delineated. It excludes general discussion, evaluation, providing background, or gathering information. A law requiring information gathering to be in the open indicates a further degree of openness. Again as cited at 38 ALR3d 1078, *Adler v. City Council of Culver City* (1960), 184 Cal. App. 2d 763, 7 Cal. Rptr. 805, decided that deliberation included "not only collective discussion, but also the collective acquisition and exchange of facts preliminary to the ultimate decision.

6. *Committee Meetings Open.* Extending openness down to the committee and subcommittee meeting level also characterizes openness. Insisting on openness in committee meetings demonstrates commitment to involving the public with the entire decision-making process and prevents a board from forming policy and rules secretly in groups smaller than the whole.

7. *Advisory Boards Open.* Advisory boards covered under sunshine laws also indicates openness. Advisory boards do not have decision making capabilities but might provide critical input into the process.

8. *Informal Meetings Open.* An open meeting law covering informal meetings beyond purely social gatherings or chance encounters indicates openness because it discourages sidestepping sunshine laws by behind-the-scenes decision making. Several states explicitly include electronic meetings, such as telephone conferences, under meetings covered.

9. *Quasi-Judicial Meetings Open.* Many states exempt from sunshine law coverage quasi-judicial proceedings by administrative or legislative bodies. Refusing to permit executive sessions for quasi-judicial purposes indicates openness.

10. *Meetings of Local Entities Open.* Extending state sunshine laws to local entities is another indicator of openness.

11. *Meetings of Less than Quorum Covered.* Covering meetings of less than the quorum for decision making indicates openness. This provision would permit public access to the range of small group discussions that precede policy formulation or rule making.

12. *Involved Parties May Request Openness.* Providing for requests by involved parties for open proceedings that by law are permitted to be closed indicates openness. Such a provision is most often attached to personnel topics as subjects that may be discussed in executive sessions. (The converse—closing a meeting at the request of involved parties—is often attached to provisions for discussing labor negotiation topics in executive session.) States that do not allow executive sessions were assigned a point in this category.

13. *Substantial Minutes of Closed Meetings Required.* Requiring substantial minutes, usually noting topics discussed, all motions and proposals presented,

and individual votes on motions and proposals, indicates openness. Arizona requires minutes to disclose enough information for the public to understand the basic subject matter of an action to be taken. Many states, however, require minutes only of open meetings. Others request only the general topic and time of discussion of executive sessions be noted, which would not qualify as "substantial." Most states that have established a requirement for substantial minutes of closed meetings do permit those records to remain confidential in order not to contravene the purpose of the closed session; however, they remain available for resolving difficulties that might arise if a decision made in closed session is challenged. States that do not allow executive sessions were assigned a point in this category.

14. *Remedial Action (Voiding or Equitable Relief).* A legal provision for remedial action when sunshine laws are contravened indicates openness. The two favored methods of remedial action are (1) voiding any decision made using procedures not in accordance with a state's open meetings law, and (2) applying equitable relief (usually an injunction, but in many states provision also is made for a writ of mandamus or a declaratory judgment or both).

15. *Criminal Penalty May be Levied.* Criminal penalties for contravening sunshine laws indicate openness. Penalties usually include a fine or a jail term or both, and can increase in size with repeated violations.

16. *Exemptions Exclusive.* A law either exempts certain subjects from open meetings provisions—allowing them to be discussed in a closed meeting—or it states specifically that there are no exemptions. A statement that the list of exemptions is exclusive—that no other subjects may be discussed in closed meetings—indicates a greater degree of openness than is found in states that include among their exemptions a provision for closing meetings for other reasons than those listed. States that do not allow executive sessions were assigned a point in this category.

17. *Personal Character or Reputation.* A law insisting that discussions that might affect a person's character or reputation must be conducted in the open indicates openness.

18. *Employment.* A law insisting that general personnel discussions, including employment or appointment of individuals, must be held in the open indicates openness.

19. *Property.* Insisting that discussions surrounding property transactions be conducted in the open indicates openness.

20. *Other Financial Matters.* A law that does not allow other kinds of financial matters to be discussed in executive session indicates openness. In some states investment decisions, donations, or any decisions regarding matters that might have a financial impact may be discussed in executive session.

21. *Legal.* Requiring discussions between a public body and its legal counsel be conducted in the open indicates openness.

22. *Labor Strategy.* Requiring strategy sessions of public bodies preparing for labor negotiations be held in the open indicates openness.

23. *Labor Negotiations.* Requiring labor negotiations be held in the open indicates openness.

24. *Enforcement Agency.* Establishing a state agency to enforce the open meeting law indicates openness.

25. *Security.* Requiring discussions of security matters be held in the open indicates openness.

To develop a nationwide spectrum of openness, a state was assigned one point for each characteristic that applied to it; the sum of points for each state was its "score." A high score indicates greater openness, and a low score indicates less openness. Points were assigned based only on a reading of the annotated laws, and thus do not take into account elaborations or interpretations of the laws that might have occurred as case law has further developed. The accompanying charts show the points assigned each state and the summary spectrum.

Further Breakdowns of State Sunshine Laws

The following charts provide finer detail on some aspects of state sunshine laws.

The first describes the criteria by which a state's sunshine law determines which bodies are covered. The terms include:

- public funding (covering bodies supported in whole or in part by public funds)
- public spending (covering bodies responsible for spending public money)
- mandated by law (covering bodies mandated by statute or law)
- public function (covering bodies serving a public function)
- policy making or rule making (covering bodies responsible for making policy or establishing rules for the public)
- enumeration (covering bodies enumerated within the law)

The second chart shows the number of people considered in each state to constitute a "meeting" for purposes of the sunshine laws. The third shows which specific sanctions for violating sunshine laws, including civil penalties, are allowed for each state. In general civil penalties were so mild they were not deemed to establish effective deterrents. Therefore, civil penalties included in a state law were not defined as a characteristic of openness.

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A Matrix of Openness

	Policy Statement	No bodies explicitly exempted	All final action in open meeting	Decisions in open meeting	Information gathering in open meeting	Committee meetings open	Advisory boards open	Information meetings open	Quasi-judicial meetings open	Meetings of local entities open	Meetings of less than quorum covered	Involved parties may request openness	Substantial minutes of closed meetings required	Remedial action – voiding or equitable relief	Criminal penalty may be levied	Exemptions exclusive	Personal character or reputation	Employment	Property	Other financial	Legal	Labor strategy	Labor negotiations	State Agency to Monitor	Security	Total
Alabama	■		■	■		■			■	■				■	■	■		■	■							19
Alaska	■		■			■	■					■		■		■		■	■		■		■		■	14
Arizona	■		■			■	■		■	■				■	■	■		■	■						■	14
Arkansas	■	■	■			■			■	■				■	■	■		■	■							14
California	■		■			■	■		■	■		■		■	■	■			■		■		■		■	15
Colorado	■	■	■	■				■	■	■	■		■	■	■	■										11
Connecticut	■					■			■	■		■	■	■		■				■			■			12
Delaware			■	■	■	■			■	■		■	■	■	■	■				■				■		11
Florida			■	■	■	■	■	■	■	■		■	■	■	■	■							■			15
Georgia			■	■		■		■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■		■	21
Hawaii	■		■	■					■	■		■	■	■	■	■						■	■		■	10
Idaho	■		■	■		■				■		■		■	■	■			■							10
Illinois	■		■	■	■	■		■		■			■	■		■									■	9
Indiana	■	■	■	■		■	■		■	■			■	■	■	■										15
Iowa	■	■		■	■	■		■	■	■				■		■									■	12
Kansas	■		■	■		■	■	■		■	■	■	■	■		■						■			■	14
Kentucky			■	■	■	■	■	■		■		■		■	■	■						■			■	13
Louisiana	■		■	■		■		■		■		■	■	■		■									■	13
Maine	■	■	■			■			■	■		■		■	■	■		■								11
Maryland	■		■	■		■	■	■		■			■	■		■			■						■	12
Massachusetts			■	■		■				■		■	■	■		■										10
Michigan			■	■	■	■		■	■	■				■	■	■		■								9
Minnesota				■	■	■		■	■	■	■	■		■		■		■	■						■	13
Mississippi	■					■			■	■			■	■		■		■	■						■	14
Missouri		■							■	■				■							■					8
Montana	■		■			■	■		■	■				■		■			■						■	11
Nebraska	■			■		■	■	■	■	■		■		■	■	■		■		■					■	16
Nevada	■			■		■	■		■	■		■	■	■	■	■		■	■		■				■	16
New Hampshire	■					■	■		■	■			■	■		■		■	■	■	■		■		■	17
New Jersey	■			■		■			■	■		■	■	■		■			■	■	■		■		■	14
New Mexico	■	■	■	■		■			■	■		■		■	■	■									■	12
New York	■			■		■	■	■	■	■				■	■	■									■	13
North Carolina	■			■		■	■	■	■	■				■										■	■	11
North Dakota			■	■		■		■	■	■			■	■											■	12
Ohio	■		■	■		■			■	■	■	■		■	■			■	■		■	■	■		■	14
Oklahoma	■		■	■		■			■	■				■		■									■	11
Oregon	■		■	■	■	■	■	■	■	■		■	■	■		■		■	■						■	15
Pennsylvania		■				■			■	■				■		■									■	14
Rhode Island	■			■		■			■	■															■	5
South Carolina		■	■	■					■	■		■	■	■		■		■								11
South Dakota			■	■				■	■	■		■		■	■				■			■				11
Tennessee	■	■	■	■	■	■		■	■	■	■	■	■	■				■	■			■		■		8
Texas			■	■		■			■	■				■	■	■	■	■	■	■	■	■		■	■	22
Utah	■	■	■	■		■			■	■				■	■	■		■				■				9
Vermont	■		■	■	■	■	■		■	■				■	■	■			■			■				15
Virginia	■	■	■	■		■		■	■	■	■			■	■			■	■			■				10
Washington	■		■			■			■	■		■		■		■				■	■	■		■		13
West Virginia	■		■	■		■	■		■	■		■		■		■			■	■		■				9
Wisconsin	■		■	■		■		■	■	■		■		■	■					■	■	■				14
Wyoming	■		■			■			■	■		■		■		■			■					■		9
																										8

Spectrum of State Sunshine Laws,
From "Most Open" To "Least Open"

Total Points		Total Points	
22	Tennessee	12	Colorado
			Indiana
21	Florida		Maine
			New Jersey
19	Alabama		North Carolina
17	Nevada	11	California
			Connecticut
16	Montana		Louisiana
	Nebraska		Missouri
			New York
15	Arkansas		Ohio
	Oklahoma		Rhode Island
			South Carolina
14	Alaska		
	Arizona	10	Georgia
	Iowa		Hawaii
	Minnesota		Maryland
	New Hampshire		Vermont
	North Dakota		
	Oregon	9	Idaho
	West Virginia		Massachusetts
			Texas
13	Delaware		Washington
	Illinois		Wisconsin
	Kansas		
	Kentucky	8	Mississippi
	Michigan		South Dakota
	New Mexico		Wyoming
	Utah		
	Virginia	5	Pennsylvania

Criteria for Coverage by Sunshine Laws

	Public Funding	Public Spending	Created by Law	Public Function	Policy- or Rule-making	Enumeration
Alabama		■			■	■
Alaska	■	■				
Arizona	■	■			■	
Arkansas	■	■			■	
California				■		
Colorado					■	
Connecticut			■			■
Delaware				■		
Florida			■			
Georgia			■			
Hawaii			■			
Idaho			■			
Illinois	■	■		■		
Indiana	■				■	
Iowa			■			■
Kansas	■	■			■	
Kentucky			■			
Louisiana					■	
Maine				■		
Maryland			■			
Massachusetts				■		
Michigan			■		■	
Minnesota				■		
Mississippi					■	
Missouri			■			
Montana	■	■		■		
Nebraska			■			
Nevada	■	■				
New Hampshire				■		
New Jersey		■			■	
New Mexico					■	
New York				■		
North Carolina			■		■	
North Dakota	■	■		■		
Ohio					■	
Oklahoma					■	■
Oregon				■		
Pennsylvania				■		
Rhode Island			■			
South Carolina	■	■		■		
South Dakota	■		■			
Tennessee				■		
Texas						■
Utah					■	
Vermont				■		
Virginia	■					
Washington			■			
West Virginia			■			
Wisconsin			■			
Wyoming			■			

Composition of Meetings Covered by Sunshine Laws

	Two or More	Majority of Quorum	Quorum	No Numerical Definition
Alabama				■
Alaska				■
Arizona			■	
Arkansas				■
California			■	
Colorado	■			
Connecticut			■	
Delaware			■	
Florida	■			
Georgia			■	
Hawaii			■	
Idaho			■	
Illinois		■		
Indiana			■	
Iowa			■	
Kansas		■		
Kentucky			■	
Louisiana			■	
Maine			■	
Maryland			■	
Massachusetts			■	
Michigan			■	
Minnesota			■	
Mississippi			■	
Missouri				■
Montana			■	
Nebraska				■
Nevada			■	
New Hampshire			■	
New Jersey			■	
New Mexico			■	
New York			■	
North Carolina			■	
North Dakota				■
Ohio	■			
Oklahoma			■	
Oregon			■	
Pennsylvania			■	
Rhode Island				■
South Carolina			■	
South Dakota				■
Tennessee	■			
Texas			■	
Utah			■	
Vermont				■
Virginia	3 or more			
Washington				■
West Virginia			■	
Wisconsin			50%	
Wyoming			■	

Sanctions Which May be Levied for Failure to Act in Accordance with Sunshine Laws

	Voiding of Action	Equitable Relief	Civil Penalty	Criminal Penalty	Increase for Repetitions
Alabama		■		■	
Alaska	■				
Arizona	■	■		■	
Arkansas	■	■		■	
California		■		■	
Colorado	■	■			
Connecticut	■	■	■	■	■
Delaware	■	■			
Florida	■			■	
Georgia	■				
Hawaii	■	■		■	■
Idaho	■				
Illinois	■	■		■	
Indiana	■	■			
Iowa	■	■	■		■
Kansas	■	■	■		
Kentucky	■	■		■	
Louisiana	■	■			
Maine	■			■	
Maryland	■	■			
Massachusetts	■	■			
Michigan	■	■	■	■	■
Minnesota		■	■		■
Mississippi	■	■			
Missouri	■	■	■		
Montana	■				
Nebraska	■	■		■	
Nevada	■	■		■	
New Hampshire		■			
New Jersey	■	■	■		■
New Mexico	■	■		■	
New York	■	■			
North Carolina		■			
North Dakota	■			■	
Ohio	■	■		■	■
Oklahoma	■			■	
Oregon		■	■		
Pennsylvania			■		
Rhode Island	■	■	■		
South Carolina		■		■	■
South Dakota					
Tennessee	■	■	■		
Texas	■	■		■	
Utah	■	■			
Vermont				■	
Virginia		■	■		
Washington		■	■		
West Virginia	■	■		■	
Wisconsin	■	■	■		
Wyoming	■				

APPENDIX B

Opinions of Judges and Attorneys General Applying Sunshine Laws to Higher Education

ALASKA

Alaska Community Colleges' Federation of Teachers, Local 2404 v. University of Alaska, 677 P2d 866 (Alaska 1984): The state supreme court remanded the case, noting that, should it be found that the board of regents of the newly formed University of Alaska had violated the open meeting act when merging the University out of two colleges, it would be difficult to fashion a remedy in which the damage to the university would not outweigh the remedial purposes of the sunshine law.

University of Alaska v. Geistauts, 666 P2d 424 (Alaska 1983): It was decided that the evaluation of the tenure candidacy of a faculty member who was subsequently denied tenure was conducted in violation of the state open meeting law, and the entire evaluation process should begin again.

ARKANSAS

Arkansas Gazette Co. v. Pickens, 522 SW2d 350 (1975): Meetings of the University of Arkansas trustees Student Affairs Committee are covered by the open meeting law because all committees of official bodies are covered by the act, preventing the detailed work behind formal decisions from being hidden from the public view.

ARIZONA

Rosenberg v. Arizona Board of Regents, 118 Ariz. 489, 578 P2d 168 (1978): The board of regents and tuition appeal committee of the state university are bodies within the meaning of the open meeting law and are not exempted by the exception for judicial proceedings.

Cooper v. Arizona Western District Governing Board, 125 Ariz. 463, 610 P2d 465 (Ct. App. 1980): The college's governing board acted in violation of the state open meeting law when it decided in executive session to terminate the contracts of several faculty members.

CALIFORNIA

64 OAG 875, 12-11-81: Regents of the University of California are *not* covered by the open meeting law.

65 OAG 638, 12-30-82: Members of the state board of the California community college student governing association *are* subject to the open meeting law.

COLORADO

Associated Students of University of Colorado v. Regents of the University of Colorado, 189 Colo. 482, 542 P2d 59 (1975): The open meetings law, as a general law, does not repeal other statutory or constitutional provisions and thus does not revoke the attorney-client privilege; therefore the Board of Regents may meet in executive session for communications with its attorney.

CONNECTICUT

OAG, 10-16-75: Meetings of a Joint Teacher Committee, composed of three members of the State Board of Education and three members of the Commission for Higher Education, are in fact meetings of each group and therefore covered by the state open meeting law.

Freedom of Information (FOI) Commission, FIC80-199, 3-25-81: A dean of students staff committee organized to recommend university policy regarding campus alcohol use is not a public agency under the state's FOI law.

Freedom of Information Commission, FIC81-196, 5-12-82: Discussion in executive sessions convened by the Board of Trustees of the University of Connecticut must be restricted to subject matter permitted by law.

Freedom of Information Commission, FIC83-68, 10-26-83: The faculty of the University of Connecticut's School of Law is subject to the open meeting law.

Freedom of Information Commission, FIC83-59, 11-23-83: Persons whose employment is to be discussed in executive session must receive adequate notice that such discussion will take place.

Freedom of Information Commission, FIC83-61, 11-23-83: Attachments to open meetings agendas must be made available to the public upon request.

Freedom of Information Commission, FIC83-60, 3-28-84: Notice that a recommendation concerning an individual's employment will be discussed in a specific executive session of the University of Connecticut's Board of Trustees is sufficient notice to the individual involved.

FLORIDA

Szymanski v. University of Florida, 01-8283CA (Fla. 8th Cir. Ct. 1981): In a case where the sunshine law came into conflict with the open records law, a candidate for dean of the university was at the time an employee of the

university. The conflict was not resolved, however, for the candidate waived her right to privacy for her personnel files.

In Re Dinnan, 661 F2d 426 (5th Cir. 1981): Tenure voting may not be concealed by a claim of academic freedom.

Bennet v. Warden, 33 So2d 97 (Fla. App. 1976): Fact-finding meetings between the president of St. Petersburg Junior College and representatives of "career employees" of the college are not covered by the sunshine law.

Marston v. Gainesville Sun Publications Co., Inc., App., 314 So2d 357 (1975), appeal after remand 341 So2d 783: The honors court may meet in closed session to honor the confidentiality of student records.

Wood v. Marston, 442 So2d 934 (Fla. 1983): When decision-making authority is wielded by a faculty committee, that committee is then subject to sunshine law requirements. Thus, the dean search committee of the University of Florida's law school must conduct its meetings in the open.

OAG 074-627, 1974: Advisory committees to the president of a university should meet in the open.

GEORGIA

McLarty v. Board of Regents of the University of Georgia, 231 Ga. 22, 200 SE2d 117 (1973): A committee formed by the dean of student affairs of faculty members and students to discuss student activity fund allocations recommended by the student senate is not subject to sunshine laws because it is not empowered to take official action.

ILLINOIS

People ex rel. Maciuba v. Cheston, 26 Ill. App3d 224, 323 NE2d 40 (1974): Assault and battery charges by three nonmembers against members of the university faculty senate who expelled the nonmembers from a meeting were actually charges against the state, and thus subject to the exclusive jurisdiction of the court of claims.

Pope v. Parkinson, 48 Ill. App3d 797, 363 NE2d 438 (1977): The administrator of a public facility at the University of Illinois is free to consult with informal advisory committees regarding use of that facility, an internal university affair, without being subject to openness requirements.

People ex rel. Byron v. Board of Trustees of Southern Illinois University, 412 NE2d 1188 (Ill. App. 1980): Meetings of the Board of Trustees of Southern Illinois University must be open.

OAG S-917, 1975: Actions of the intercollegiate athletic board of Eastern Illinois University were covered by the open meeting law.

IOWA

Greene v. Athletic Council of Iowa State University, 251 NW2d 559 (1977): The Iowa State Athletic Council, as a body authorized by the laws of the state, must open its meetings in accordance with the state's sunshine law.

OAG (Poncy), 1-4-78: Nonprofit organizations to which regents transfer state funds are covered by state sunshine laws because they have become, in effect, state agencies.

OAG (Richey), 5-16-79: Hearing panels of the Faculty Judicial Commission at the University of Iowa are not covered by the sunshine law because it was not directly created by the Board of Regents, nor does it exercise any policy-making or decision-making authority.

KANSAS

OAG 80-239: The Kansas University Endowment Association, a nonprofit private corporation with the purpose of securing aid for the university, is not covered by the state sunshine law because it is not an agency of the state, nor does it use public funds or employees to carry out its activities.

OAG 82-172: Opinion 80-239 applies as well to the Wichita State University Endowment Association.

KENTUCKY

Courier Journal and Louisville Times Co. v. University of Louisville, 596 SW2d 374 (Ky. Ct. App. 1980): Although a foundation formed for the purpose of holding title to the University of Louisville's real and personal property was not a public agency in accordance with the terms of the state's open meeting law, the close relationship between the foundation and the university's board of trustees, plus the fact that the foundation's governing board included the entire board of trustees of the university, led to a decision that the foundation's meetings are in fact subject to the open meeting law.

OAG 78-776: The screening committee for the president of Western Kentucky University is not a public agency according to the state open meeting law.

OAG 74-639: A student government association meeting is a private meeting, and therefore its degree of openness is a matter to be ruled upon by the organization itself.

LOUISIANA

Phillips v. Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, 391 So2d 1217 (La. App. 1980): Meetings of regents of state universities and colleges in Louisiana must be held in the open.

OAG, 11-9-73: The Louisiana Coordinating Council for Higher Education is covered by the state open meeting law, but its committee meetings are not.

MASSACHUSETTS

OAG 47, 1965-66: Trustees of the University of Massachusetts could hold a closed session to decide on the location for a new medical school, and could keep their votes secret as well.

OAG 12, 1976-77: A university board of trustees can establish rules that would allow it to close meetings.

MICHIGAN

Regents of University of Michigan v. Washtenaw County Coalition Against Apartheid, 296 NW2d 94 (Mich. App. 1980) and *Booth Newspapers, Inc. v. Regents of the University of Michigan*, 93 Mich. App. 100, 286 NW2d 55 (Mich. App. 1979): Meetings of the board of regents of the University of Michigan must be open.

OAG 5505, 1979: Promotion, tenure, and budget committees of Wayne State University are advisory boards and therefore not covered by that state's open meeting law.

OAG 6053, 1083: The above decision was applied to Central Michigan University.

MISSOURI

Tribune Publishing Co. v. Curators of University of Missouri, 661 SW2d 575 (Mo. App. 1983): Informal social meetings of the board of curators are open to the public.

OAG 18 (Koplik), 1-19-81: The Coordinating Board of Higher Education of the state is subject to open meeting laws.

MONTANA

The Missoulian v. Board of Regents of Higher Education, P2d (Mont. 1984): Presidents of the Montana University System do not waive their constitutional rights of privacy by virtue of accepting their positions as highly placed government officials; thus performance appraisals of presidents may be discussed in closed meetings.

NEW YORK

Bigman v. Siegel, Sup. Ct., Queens City, NYLJ (1977): Queens College Committee on Faculty Personnel and Budget was found not to be subject to open meetings law because it can only make recommendations. (Note: Decision would probably be reversed under amended law.)

New York University v. Whalen, 46 NY2d 734 (1978): The courts have discretion in granting remedial relief for violating the open meeting law; such relief is warranted only on a showing of good cause.

Warder v. Board of Regents of the University of the State of New York, 75 AD2d 666, 426 NYS2d 849, affirmed 53 NY2d 186, 440 NYS2d 875, 423 NE2d 352, certiorari denied 102 SCt 984: The right of the board of regents to conduct an executive session in accordance with its attorney-client privilege was upheld.

Holden v. Board of Trustees of Cornell University, 80 NY App. Div2d 378, 440 NY Supp2d 58 (1981): Even though Cornell University is a private institution, it receives public funds in order to administer its four statutory colleges and therefore is subject to the state sunshine law.

Student Association of the State University v. Wharton, Sup. Ct., Albany County (1981): Discussions and subsequent vote by State University Board of Trustees

in executive session concerning financial situation and credit history of the university in relationship to dormitory rental increase were appropriate under the open meeting law.

Brown v. Casier, 469 NYS2d 165 (1983): The open meeting claim of tenured faculty members regarding their termination for financial reasons could not be processed through the grievance procedures of their collective bargaining agreement.

NORTH CAROLINA

Student Bar Association Board of Governors of the School of Law, University of North Carolina at Chapel Hill v. Byrd, 293 NC 594, 239 SE2d 415 (1977): The law school faculty is not a governing body by the terms of the state's open meeting law, despite the fact that it exercises some decision-making authority, because the faculty's decisions could be overturned by the board of governors.

OKLAHOMA

Carl v. Board of Regents of University of Oklahoma, 577 P2d 912 (1978): Applying the open meeting law to the admissions board of the University of Oklahoma Medical School, composed entirely of faculty, senior medical students, and physicians, is appropriate.

OAG 79-13, 1979: The student government association and residence halls association of the state university are subentities of the state board of higher education and therefore covered by the state sunshine law.

OAG 81-135, 1981: The governing boards of state-operated institutions of higher education may not hold executive sessions to hear evidence and discuss student discipline matters that might soon come before it.

OAG 82-63, 1982: The Budget Council of the University of Oklahoma will fall within the definition of a public body if it exercises actual or de facto decision-making power in work that is public by nature.

OREGON

Southwestern Oregon Publishing Co. v. Southwestern Oregon Community College District, 28 Or. App. 383, 559 P2d 1289 (1977): Collective bargaining sessions with a retained mediator are not meetings of either a governing body or a public body, and therefore are not subject to state sunshine law restrictions.

39 OAG 480, 1-12-79: A written personnel evaluation of a community college president is exempt from public inspection under the state open record law; therefore, the evaluation can be discussed in executive session according to the open meeting exemption for discussions "to consider records that are exempt from public inspection."

44 OAG, 6-27-84: Student government committees that prepare and recommend incidental fee assessments and allocations are covered by the state open meeting law, even should that committee include some nonstudent members.

SOUTH CAROLINA

OAG, 6-1-84: The tenure committee of Lander College is a public body for the purposes of the open meeting act. Thus both positive and negative votes taken in executive session must be ratified in public before they become effective. Nothing in the open meeting law forces an individual to vote the same way in public as he or she did in private.

TENNESSEE

Fain v. Faculty of the College of Law of the University of Tennessee, 552 SW2d 752 (Tenn. Ct. App. 1977): Neither faculty meetings nor faculty committee meetings need be open under the Tennessee sunshine law because they have authority only to make recommendations to an administrative officer, not to a public body.

TEXAS

OAG H-246 (1974): The board of regents of a state university cannot meet in closed executive session to consider conferring an honorary degree unless the candidate is also an officer or employee of the university and the meeting relates to his or her employment or appointment.

OAG H-438 (1974): The Athletic Council of the University of Texas at Austin is a government body which supervises public business, and therefore it must comply with state open meeting laws.

OAG H-772 (1976): A meeting of a group of employees, such as the general faculty of a state college or university, need not comply with sunshine laws. Thus the Texas Tech. Athletic Council is not covered as long as it exercises no control over public business or policy.

OAG H-1045 (1977): The board of directors of the Texas A&I university system may use whatever selection method it desires for appointing adminstrative officers as long as it isn't arbitrary or capricious, but it cannot close meetings for the general purpose of "discussion of personnel changes" when they concern the positions of chancellor of the university system or president of a university because those are the positions in which the public has a legitimate interest.

OAG (1984): An accreditation committee of the University of South Texas System need not disclose internal working documents derived from meetings held during the accreditation process.

WASHINGTON

Cathcart v. Andersen, 85 Wash2d 102, 530 P2d 313 (1975): Because the law school faculty exercises decision-making powers in changing the curriculum, amending scholastic standards, and taking final action in sponsoring guest speakers, it exercises decision-making authority and thus is a governing body of a public agency subject to the state sunshine law.

In Re Consolidated Hearings on Appeals, Appellants Refai and Ware (Hearing Officer Beles, 9-9-83): A faculty senate executive committee that developed criteria for determining how departments and programs would be selected for

reduction to meet budgetary needs is covered by the state open meeting law because it is a policy-making body.

WISCONSIN

OAG 12-10, 1968: Faculty meetings at Wisconsin state universities are subject to the state open meeting law.

OAG 2-23, 1977: Departments and other formally constituted subunits of the University of Wisconsin are governing bodies and therefore subject to the state open meeting law, although exempt from certain notice requirements. Promotions not relating to tenure, merit increases, and property purchase recommendations may be discussed in closed session.

OAG 2-25, 1977: University of Wisconsin committee meetings in which power is limited to voting on recommendations and in which final power rests in the board of regents are still covered by the sunshine law.

OAG 8-6, 1980: The Wisconsin Student Association is not a public agency and therefore not subject to sunshine laws. However, it may not hire an attorney without consulting with the chancellor and being confirmed by the university's board of directors.

OAG 12-8, 1981: The United Council of University of Wisconsin Student Governments is not covered by the state open meeting law, because it is not a governing body but a body formed by the students themselves.

NOTE: Ann H. Franke of the AAUP contributed to this compilation and has analyzed in further depth some of the most significant decisions.

APPENDIX C

Citations to State Sunshine Laws

Alabama Code 13A-14-2

Alaska Statutes Sections 44.62.310 to 44.62.312

Arizona Revised Statutes Annotated Section 38-431

Arkansas Statutes Annotated Sections 12-2801 to 2807

California Government Code Sections 11120 to 11131

Colorado Revised Statutes Sections 24-6-401-02, 29-9-101

Connecticut General Statute Annotated Sections 1-15 to 1-21k

Delaware Code Annotated titles 28, Sections 10001-10005

District of Columbia Code Annotated Sections 1-1504

Florida Statutes Annotated Sections 286-0105 to 286.26

Georgia Code Annotated Sections 50-14-1 to 50-14-1.5-7

Hawaii Revised Statutes Sections 92-1 to 92-13

Idaho Code Sections 67-2340 to 67-2347

Illinois Annotated Statutes Chapter 102, Sections 41 to 46

Indiana Code Annotated Sections 5-14-1.5-5 to 5-14-1.5-7

Iowa Code Annotated Sections 28A.1 to 28A.9

Kansas Statutes Annotated Sections 75-4317 to 75-4320a

Kentucky Revised Statutes Annotated Sections 61.805 to 61.845

Louisiana Revised Statutes Annotated Sections 42:4.1 to 42:4.12

Maine Revised Statutes Annotated Title 1, Sections 401 to 410

Maryland Annotated Code Article 76A, Sections 7-15

Massachusetts Annotated Laws C.30A Sections 11A-11A-½; C.20 Sections 23A-24

Michigan Statutes Annotated Sections 4.1800(11) to 4.1800(23)

Minnesota Statutes Annotated Section 471.705

Mississippi Code Annotated Sections 25-41-1 to 25-41-7

Missouri Revised Statutes Sections 610.010 to 610.120

Montana Code Annotated Section 2-3-201; Article 2, Section 9 of the 1972 Constitution

Nebraska Revised Statutes Sections 84-1409 to 84-1414

Nevada Revised Statutes Sections 241.010 to 241.040

New Hampshire Revised Statutes Annotated Sections 91-A:1 to 91-A:8

New Jersey Statutes Annotated Sections 10:4-6 to 10:4-21

New Mexico Statutes Annotated Sections 10-15-1 to 10-15-4

New York (Public Officers) Sections 95-106

North Carolina General Statutes Sections 143-318.9 to 143-318.16

North Dakota Cent. Code Sections 44-04-19 to 44-04-21

Ohio Revised Code Annotated Section 121.22

Oklahoma Statutes Annotated title 25, Sections 301 to 314

Oregon Revised Statutes Section 192.610 to 192.690

Pennsylvania Statutes Annotated title 65, Sections 261 to 269

Rhode Island Laws Sections 42-46-1 to 42-46-10

South Carolina Code Annotated Sections 30-4-10 to 30-4-110

South Dakota Codified Laws Annotated Section 1-25-4

Tennessee Code Annotated Sections 8-44-101 to 8-44-106

Texas Revised Civil Statutes Annotated article 6252-17

Utah Code Annotated Sections 52-4-9 to 52-4-10

Vermont Statutes Annotated Title 1, Sections 311 to 315

Virginia Code Sections 2.1-341 to 2.1-346.1

Washington Revised Code Annotated Sections 42.30.010 to 42.30.920

West Virginia Code Section 6-9A-1

Wisconsin Statutes Annotated Sections 19.81 to 19.98

Wyoming Statutes Annotated Sections 16-4-401 to 16-4-407

APPENDIX D

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Selected Bibliography

Ashworth, Kenneth. "Searching, Searching, Gone." *Change*, May/June 1982, pp. 20-23.

Baldridge, J. Victor. *Academic Governance: Research on Institutional Politics and Decision Making*. Berkeley: McCutchan Publishing Corp., 1971.

————. *Governing Academic Organizations: New Problems and Perspectives*. Berkeley: McCutchan Publishing Corp., 1977.

Bensabat, Caroline Lilly. "Open Meetings in Higher Education—An Analysis and a Proposal for Florida." *University of Florida Law Review*, Winter 1982, pp. 250-279.

Berg, Richard K., and Stephen H. Klitzman. *An Interpretive Guide to the Government in the Sunshine Act*. Washington, D.C.: Administrative Conference of the United States, 1978.

Casey, Michael W. III. "What is the Effect of a 'Sunshine Law' on Public Sector Collective Bargaining: A Management Perspective." *Journal of Law and Education* 5:481-485 (1976).

Cleveland, Harlan. "How Do You Get Everybody in on the Act and Still Get Some Action?" *Educational Record*, Summer 1974.

————. "The Trouble with Sunshine Laws." *AGB Reports*, May/June 1983, pp. 23-26.

Commission on Strengthening Presidential Leadership. *Presidents Make A Difference: Strengthening Leadership in Colleges and Universities*. (Clark Kerr, dir.) Washington, D.C.: Association of Governing Boards, 1984.

Cross, Harold L. *The People's Right to Know*. New York: Columbia University Press, 1953.

Delmont, Timothy John. *Openness in Resource Planning in State Universities*. Ph.D. dissertation, University of Minnesota, 1980.

Dilts, Jon. "The 'Open Door' Laws: An Appraisal of Open Meeting Legislation in Indiana." Valparaiso University Law Review 14:295-322 (1980).

Franke, Anne. "Higher Education and the Sunshine: Application of Open Meeting Statutes to Public Colleges and Universities." Washington, D.C.: American Association of University Professors, 1984. Photocopied.

Gillmor, Donald M., and Jerome A. Barron. *Mass Communication Law: Cases and Comment*, 4th ed. St. Paul: West Publishing Company, 1984.

Hollow, Richard L., and Rudolph Ennis. "Tennessee Sunshine: The People's Business Goes Public." *Tennessee Law Review* 42:522-572 (1975).

Ingram, Richard T., and Associates. *Handbook of College and University Trusteeship: A Practical Guide for Trustees, Chief Executives, and Other Leaders Responsible for Developing Effective Governing Boards*. San Francisco: Jossey-Bass Inc., Publishers, 1980.

Kaplowitz, Richard A. "The Impact of Sunshine/Open Meeting Laws on the Governing Boards of Public Colleges and Universities." Association of Governing Boards, July 1978. Photocopied.

Klitzman, Stephen H. "Government in the Sunshine Act—Nuts, Bolts, and Tacks: A Summary of Statutory Provisions, Judicial Interpretations, and Pending Issues." *The Federal Bar Journal*, vol. 38, no. 2-4, 1979, pp. 114-133.

Little, Joseph W., and Thomas Tompkins. "Open Government Laws: An Insider's View." *The North Carolina Law Review*, February 1979, pp. 451-459.

Mason, Christopher W. "1981 FOIA Developments." *Duke Law Journal*, 423-459 (1982).

McLaughlin, Judith Block. *Confidentiality and Disclosure in the Presidential Search Process*. Ph.D. dissertation, Harvard University, 1983.

"Minnesota's Open Meeting Law After Twenty Years: A Second Look." *William Mitchell Law Review*, 5:375-419 (1979).

Peacock, James R. III. "1980 FOIA Developments." *Duke Law Journal*, 338-376 (1981).

Perritt, Henry H., Jr., and James A. Wilkinson. "Open Advisory Committees and the Political Process: The Federal Advisory Committee Act After Two Years." *The Georgetown Law Journal*, 63:705-747.

Postman, Neil. *Teaching as a Conserving Activity*. New York: Dell Publishing Co., 1979.

Riesman, David. "The Vicissitudes of the Search Process." Speech to the American Association of University Administrators, June 27, 1983. Photocopied.

Shurtz, Nancy E. "The University in the Sunshine: Application of the Open Meeting Laws to the University Setting." *Journal of Law and Education*, 5:453-464 (1976).

Simon, Arthur M. "The Application of State Sunshine Laws to Institutions of Higher Education." *Journal of College and University Law*, 4:83-145 (1977).

Slesnick, Donald D. "What is the Effect of a 'Sunshine Law' on Public Sector Collective Bargaining: A Union Perspective. *Journal of Law and Education*, 5:487-493 (1976).

Sloat, Robert W. "Government in the Sunshine Act: A Danger of Overexposure." *Harvard Journal on Legislation*, 14:620-650 (1977).

Society of Professional Journalists, Sigma Delta Chi. *Gaining Access '84: 50-State Survey*. Chicago: Society of Professional Journalists, Sigma Delta Chi, 1984.

Stadtman, Verne A., and David Riesman, eds. *Academic Transformations*. New York: McGraw-Hill Publishing Company, 1973.